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SUPREME COURT OF THE UNITED STATES.

No. 755.

WELLS W. LEGGETT AND LEVERETT L. LEGGETT, APPELLANTS,

vs.

BENJAMIN F. AVERY, SAMUEL AVERY, AND GEORGE AVERY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED MAY 12, 1879.

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1 Proceedings of the circuit court of the United States for the district of Kentucky, at a regular term begun and held at the Federal court hall in the city of Louisville, on Monday, February , 1878.

Present, the Hon. Bland Ballard, judge of the U. States for the district of Kentucky.

WELLS W. LEGGETT AND LEVERETT L. LEGgett, complainants,
vs.
BENJAMIN F. AVERY, SAMUEL AVERY, AND George Avery, defendants.

Be it remembered that heretofore, to wit, on the 22nd day of October 1875, came the complainants, by , their counsel, and filed in the clerk's office of said court their bill in equity against the above-named defendants.

The bill above referred to is in words and figures as follows, to wit:

2 *Bill of complaint.*

United States circuit court, district of Kentucky. In equity.

WELLS W. LEGGETT AND LEVERETT L. LEGgett
vs.
B. F. AVERY & SON, BENJAMIN F. AVERY, Samuel Avery, George Avery.

To the honorable the judges of the circuit court of the United States in and for the district of Kentucky:

Wells W. Leggett, resident of Cleveland, Ohio, and a citizen of the State of Ohio, and Leverett L. Leggett, resident of Cleveland, Ohio, and citizen of the State of Ohio, bring this bill of complaint against Benjamin F. Avery, Samuel Avery, & George Avery, citizens of the State of Kentucky, & residing at Louisville, in said State, & doing business under the firm-name of B. F. Avery & Son, in the said State of Kentucky, and having their principal office at Louisville, in said State.

And thereupon your orators complain and say that heretofore, and before the 9th day of October, A. D. 1860, Mathew G. Slemmons was the true, original, and first inventor of a certain new and useful improvement in plows, not known or used by others before his said in-
3 vention, and not at the time of his application for a patent in public use or on sale with his consent and allowance.

And your orators further show unto your honors that the said Mathew G. Slemmons, being as aforesaid the inventor of said improvement, and being a citizen of the United States, made application to the Commissioner of Patents for letters patent therefor, in accordance with the then existing acts of Congress, and having duly complied in all respects with the conditions and requisitions of said acts, on the 9th day of October, 1860, letters patent of the United States, No. 30357, signed, sealed, and executed in due form of law, for the said invention or discovery, were issued to the said Mathew G. Slemmons, whereby there was secured to said Mathew G. Slemmons, his heirs, executors, administrators, or assigns, for the term of fourteen years from the 9th day of

October, 1860, the full and exclusive right of making, using, and vending to others to be used the said improvements, which said letters patent are now of record in the Patent Office of the United States, a certified copy of which is here in court, ready to be produced.

And your orators further show unto your honors that Mathew G. Slemmons, having for good and lawful cause surrendered said letters patent to the Commissioner of Patents, and having in all things
4 complied with the acts of Congress in such case made and provided, they were canceled, and new letters patent for the same invention, for the residue of the term of said original letters patent, and marked "Reissue No. 3514," were on the 22d day of June, 1869, issued to the said Mathew G. Slemmons, a certified copy of which said reissued letters patent is here in court, ready to be produced.

And your orators further show unto your honors that the said Mathew G. Slemmons heretofore, and before the 9th day of October, A. D. 1874, made due application to the Commissioner of Patents of the United States for an extension of said letters patent, under and in accordance with the provisions of the acts of Congress in that case made and provided, and having complied with all the requirements of said acts relating thereto, the said letters patent were duly extended by the said Commissioner of Patents for the term of seven years from the 9th day of October, A. D. 1874, whereby there was granted and secured to the said Mathew G. Slemmons, his heirs, executors, administrators, and assigns, for the said extended term of seven years from the said 9th day of October, 1874, the full and exclusive right of making, using, and vending to others to be used the improvement in plows aforesaid, as by cer-
5 tificate of extension, duly signed by the said Commissioner and recorded in the United States Patent Office, or a certified copy thereof, ready in court to be produced, will more fully and at large appear.

And your orators further show unto your honors, that on or about the 23d day of February, 1874, the said Mathew G. Slemmons, by an instrument in writing, sold, assigned, and transferred to your orators, their heirs and assigns, all his right, title, and interest in and to the said invention, and any interest that he might become possessed of by virtue of said letters patent, or any extensions or reissues of same, conditioned upon the payment to the said Mathew G. Slemmons, sixty days after the date of the said extension of two thousand dollars cash, and with other material and valuable considerations, which said conditions were all fulfilled by your orators in exact accordance with the terms and spirit of said instrument, and to the satisfaction of the said Slemmons, which said instrument was duly recorded in the Patent Office of the United States, and the same or a duly certified copy of which is here in court, ready to be produced.

And your orators further show unto your honors that Mathew G. Slemmons and your orators having, for good and lawful cause, surrendered said extended letters patent to the Commissioner of Patents,
6 and having made due applicationt herefor, and having in all things complied with the acts of Congress in such case made and provided, they were cancelled, and new letters patent for the same invention, which were marked reissue No. 6131, were on the 10th day of November, 1874, in due form of law, issued to your orators as assignees of the said Mathew G. Slemmons, which said last-mentioned letters patent, or a certified copy of same, are here ready, in court, to be produced.

And your orators further show unto your honors, that by virtue of the premises, they, your orators, became and now are the sole and ex-

clusive owners of said reissued letters patent No. 6131, and the invention and improvements described therein, and of all the rights and privileges granted and secured, or intended to be granted and secured thereby, and that since they became the owners thereof, as aforesaid, they have expended large sums of money and have been to great trouble in and about said invention, for the purpose of carrying on, and causing to be carried on, the business of manufacturing the said improvements, and making the same profitable to themselves and useful to the public, and that said invention has been and is of great benefit and advantage and that large numbers of implements have been made according to the said invention and by virtue of said letters patent, and sold by
7 your orators and by other parties licensed under the said patent, with great advantage to the public, and that the public have generally acknowledged and acquiesced in the aforesaid rights of your orators as secured by the said letters patent. And your orators believe that they will realize and receive large gains and profits therefrom, if infringements by said defendants and their confederates shall be prevented.

And your orators further show unto your honors, that the inventions and improvement described and claimed in the said letters patent are embodied in implements as manufactured by the said defendants.

Yet the defendants, well knowing the premises, and the rights secured to your orators as aforesaid, but contriving to injure your orators and to deprive them of the benefits and advantages which might and otherwise would accrue unto them, from said invention, after the issuing of said reissue No. 6131, as aforesaid, and before the commencement of this suit, did, as your orators are informed and believe, without the license or allowance and against the will of your orators, and in violation of their rights and in infringement of the aforesaid reissue No. 6131, unlawfully and wrongfully and in defiance of your orators, make, construct, use, and vend to others to be used, the said invention, and did make, construct, use and vend to others to be used, implements made
8 in accordance with and employing and containing said invention, and they still continue so to do, and that they are threatening to make the aforesaid implements in large quantities, and to supply the market therewith, and to sell the same, and that they did conspire to make and sell the said implements in infring'ment of your orators' rights, all in defiance of the rights acquired by and secured to your orators as aforesaid, and to their great and irreparable loss and injury, and by which they have been and still are being deprived of great gains and profits which they might, and otherwise would have obtained, but which have been realized and enjoyed by the said defendants by and through their aforesaid unlawful acts and doings aforesaid.

And your orators further show unto your honors, on information and belief, that said defendant have sold large quantities of said implements, and have a quantity on hand, which they are offering for sale, and have made and realized large profits and advantage therefrom, but to what extent and how much exactly, your orators do not know and pray discovery thereof, and your orators say that the use of said invention by said defendants, and other aforesaid unlawful acts in disregard
9 and defiance of the rights of your orators have the effect to aid and encourage, and induce others so to venture to infringe said patent in disregard of your orators' rights.

And your orators further show unto your honors that they have caused notice to be given to said defendants of said infringement and of the rights of your orators in the premises, and requested them to desist and re-

frain therefrom, but they have disregarded said notice, and refuse to desist from said infringement, and still continue to make and sell said implements in disregard of your orators' rights.

And forasmuch as your orators can have no adequate relief except in the courts, to the end that the defendants may be compelled to account for and pay over to your orators the income thus unlawfully derived from the violations of the rights of your orators as above, and be restrained from any further violations of said rights, your orators pray that your honors may grant a writ of injunction restraining the defendants from any construction or sale or use in any manner of said patented implements, or any parts thereof, in violation of the rights of your orators as aforesaid, and that the implements made in accordance with the said patent now in possession or use of said defendants may be destroyed or delivered up to your orators for that purpose; and also that your honors, upon the entering of a decree for infringement, as above prayed for, may proceed to assess, or cause to be assessed, under your direction, in addition to the profits to be accounted for by the defendants as aforesaid, the damages your orators have sustained by reason of such infringement, and that your honors may increase the actual damages so assessed to a sum equal to three times the amount of such assessment, under the circumstances of the wilful and unjust infringement by said defendants, as herein set forth.

And your orators pray also for a provisional or preliminary injunction, and for such other relief as the equity of the case may require, and as to your honors may seem meet.

May it please your honors to grant unto your orators a writ of injunction conformable to the prayer of this bill, and also a writ of subpœna of the United States of America, directed to the said B. F. Avery & Son, Benjamin F. Avery, Samuel Avery, and George Avery, and commanding them, the said recited defendants, to appear and answer this bill of complaint, and to abide and perform such orders and decree in the premises as to the court shall seem meet, and be required by the principle of equity and good conscience.

WELLS W. LEGGETT.
LEVERETT L. LEGGETT.

Attest:
FRANCIS TOUMEY,
M. W. LEGGETT,
Solicitor for Compl't's & Counsel.

NORTHERN DISTRICT OF OHIO,
County of *ss:*

On this 8th day of October, 1875, before me personally appeared Wells W. Leggett, one of said above-named complainants, who being by me duly sworn, doth depose and say that he has read the foregoing bill of complaint subscribed by him, and know the contents thereof, and that the same is true of his own knowledge except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

WELLS W. LEGGETT.

Sworn to and subscribed before me at Cleveland, O., this 8th day of Oct., 1875.

CHAS. H. BELL,
U. S. Com'r, N. D. C.

Com'r's. fee, 50 c.

12 And afterwards, to wit, on Monday, December 6th, 1875, in the clerk's office of said court, came the defendants by Jno. M. Harlan & Hatch & Parkinson, their counsel, and entered the appearance of said defendants.

And afterwards, to wit, on the 9th day of February, 1876, came the defendants by their counsel, John M. Harlan & Hatch & Parkinson, and filed their answer herein; which is as follows, to wit:

United States circuit court, district of Kentucky. In equity.

WELLS W. LEGGETT AND LEVERETT L. LEGGETT
vs.
B. F. AVERY & SON, BENJAMIN F. AVERY, Samuel Avery, and George Avery. } No. .

The joint and several answer of B. F. Avery & Sons, Benjamin F. Avery, Samuel Avery, and George Avery, respondents to the bill of complaint of Wells W. Leggett and Leverett L. Leggett, complainants.

13 These respondents now and at all times hereafter saving and reserving to themselves all and all manner of benefit and advantage of exception that may be had or taken to the manifold errors, uncertainties, and insufficiencies of the said bill of complaint, for answer thereto, or to so much thereof as they are advised it is material or necessary for them to answer unto, answering say that they admit that letters patent for an alleged improvement in plows were issued to Mathew G. Slemmons October 9th, 1860, but deny that said Slemmons was the original and first inventor thereof.

And further answering these respondents admit that reissued letters patent were, on June 22d, 1869, issued to said Slemmons, but they deny that said reissued letters patent were for the same invention as the original.

And further answering, these respondents admit that said reissued letters patent were extended by the Commissioner of Patents for seven years from October 9th, 1874, but they deny, on information and belief, that said reissue was legally extended, or that the application for said extension was duly and properly made under and in accordance with the acts of Congress in that case made and provided.

14 And further answering, these respondents say that they have no knowledge or information on which to found a belief as to the truth of the allegations in the bill concerning an assignment from said Slemmons to complainants, and therefore request that complainants be required to prove their said allegations.

And further answering, these respondents admit that said letters patent were surrendered and new letters patents, marked "reissue No. 6131, were, on the 10th day of November, 1874, issued to the said complainants as assignees of said M. G. Slemmons, but whether they were in fact such assignees these respondents do not know, but they deny, on information and belief, that said extended letters patent were for good and lawful cause surrendered, or that said reissued letters patent are for the same invention as the original, or that said Mathew G. Slemmons was the original and first inventor of the devices therein described and claimed.

And further answering, these respondents deny, on information and

belief, that the complainants have expended large, or any sums of money, or have been to great or any trouble in and about said alleged invention, or have carried on, or caused to be carried on, the business of manufacturing the same, or that said alleged invention is of great
15 or any benefit and advantage by reason of any invention thereof by Mathew G. Slemmons aforesaid.

And further answering, these respondents deny that the inventions and improvements described and claimed in the letters patent on which suit is brought are embodied in implements as manufactured by them, or that they in any manner infringe, or have infringed upon, or violated any rights of the said complainants under said letters patent.

And having fully answered the bill of complaint, these respondents, by way of further defense, say on information and belief:

1st. That said reissued letters patent No. 6131 granted to said complainants November 10th, 1874, are for a different invention from that patented, or intended to be patented, in or by the original letters patent of October 9th, 1860, and contain matter not found in the specification or drawings of said original letters patent, nor embodied in the model appertaining thereto.

2nd. That the alleged inventions described and claimed in the said reissued letters patent No. 6131 were in public use in this country with the consent and allowance of the said M. G. Slemmons for more than two years prior to his application for a patent therefor.

16 3d. That said alleged invention had been abandoned to the public.

4th. That said alleged inventions were on sale in this country by the said patentee for more than two years prior to his application for a patent therefor.

5th. That the said Matthew G. Slemmons was not the original and first inventor or discoverer of any material and substantial part of the thing patented, but that in view of the state of the art at the time of his application for the original patent of which they purport to be a reissue said reissued letters patent are not for a patentable subject matter.

5th. That prior to the alleged invention or discovery thereof by the said Matthew G. Slemmons, the alleged improvements described and claimed in said reissued letters patent No. 6131, or a material and substantial part thereof, were described and shown in the following letters patent of the United States, to wit:

No. 10031, granted Samuel Hulbert September 20th, 1853, for improvement in plows.

No. 10107, granted Nathan Harrison and John W. Metcalf October 11th, 1853, for improved hill-side ploughs.

No. 10123, granted L. M. Whiteman October 11th, 1853, for imp't in cultivators.

17 No. 10236, granted George Philips November 15th, 1853, for improvement in cultivators and seed-planters.

No. 10694, granted Luther B. Fisher March 28th, 1854, for a seed-planter.

No. 12163, granted Jno. Emel January 2d, 1855, for imp't in cultivators.

No. 12536, granted Samuel Knox March 13th, 1855, for imp't in cultivators.

No. 12609, granted R. P. Van Horn M'ch 27th, 1855, for imp't in cultivators.

No. 12611, granted William P. Zane M'ch 27th, 1855, for imp't in cultivators.

No. 15453, granted Jacob Zimmerman July 29th, 1856, for imp't in cultivators.

No. 16498, granted Daniel W. Shares January 27th, 1857, for imp't in harrows.

No. 16906, granted John B. Baker March 31st, 1857, for imp't in corn cultivators.

No. 17777, granted George G. Black July 14th, 1857, for imp't in cultivator ploughs.

No. 17909, granted Harrison Ogborn and George Taylor July 28th, 1857, for imp't in cultivators.

No. 18073, granted Charles F. Sayre August 25th, 1857, for imp't in cultivators.

No. 18714, granted Joseph Summers November 24th, 1857, for imp't in cultivators.

No. 18739, granted Joshua Gibbs December 1st, 1857, for imp't in cultivators.

No. 19163, granted Thomas Thompson January 19th, 1858, for imp't in ploughs.

18 No. 19262, granted Joseph O. Ramage February 2d, 1858, for imp't in ploughs.

No. 19412, granted Paul Dennis February 23d, 1858, for imp't in shovel ploughs.

No. 19584, granted D. B. Rogers, Seymour Rogers, and Leman Rogers, M'ch 9th, 1858, for imp't in cultivators.

No. 19886, granted Joshua C. Williamson April 8th, 1858, for imp't in ploughs.

No. 20968, granted Walter Warren July 20th, 1858, for imp't in ploughs.

No. 21055, granted William Adams August 3d, 1858, for imp't in cultivators.

No. 22316, granted Thomas Turner December 14th, 1858, for imp't in cultivators.

No. 22438, granted F. M. Marshall December 28th, 1858, for imp't in seed-planters.

No. 22520, granted George W. Tollhurst January 4th, 1859, for imp't in cultivators.

No. 22612, granted R. L. Allen January 18th, 1859, for imp't in potato-diggers.

No. 22974, granted T. J. De Yarupert May 10th, 1859, for imp't in ploughs.

No. 24227, granted Reuben M. Melton May 31st, 1851, for imp't in cultivators.

No. 26563, granted Rhodorn M. Brooks December 27th, 1859, for imp't in cotton-seed planters.

No. 26618, granted Morgan L. Rogers December 27th, 1859, for imp't in cultivators.

Patent granted J. S. Eastman for a cultivator, and dated June 30th, 1836.

19 Patent granted R. H. Springstied for a cultivator and seed-planter, and dated Feb'y 12th, 1845.

No. 5998, granted A. Leland January 2d, 1849, for imp't in combined plough.

Patent granted Marshall Mims and Seaborn J. Mims (1841) for altering set of plows.

No. 4762, granted Isaac Edwards Sept. 19th, 1846, for a corn plough.

No. 8842, granted W. F. Pagett March 30th, 1852, for a shovel plough.

No. 8721, granted J. H. Foreman February 10th, 1852, for a shovel plough.

No. 8170, granted Jno. Cooper, as administrator of Benjamin Giger, June 26th, 1857, for a plough.

Patent granted W. K. Allen January 31st, 1844, for adjusting plough.

No. 10505, granted Jno. S. Hall August 1st, 1854, for a plough.

No. 253, granted John Weaver July 5th, 1837, for machine for thinning cotton plants.

No. 3052, granted Jeremiah Gallatin April 15th, 1843, for imp't in plow.

No. 5257, granted Elijah M. Harris and James Cleghorn August 21st, 1847, for cotton-thinners.

No. 11929, granted Job Brown November 14th, 1854, for imp't in cultivators.

No. 5755, granted Rob't Crisswell, jr., September 5th, 1848, for cultivator plant.

20 7th. That prior to the supposed invention or discovery thereof by the said Matthew G. Slemmons, and more than two years before his application for a patent therefor, the alleged improvements described and claimed in said reissued letters patent, on which this suit is brought, or a material and substantial part thereof, were in public use in this country at the following places, to wit:

At Ridgeville, Virginia, by Nathan Harrison and John W. H. Metcalf, residents of said Ridgeville.

At Jacksontown, Ohio, by R. P. Van Horn, a resident of said Jacksontown.

At Woolwich, New Jersey, by William P. Zane, a resident of said Woolwich.

At Greensfork, Indiana, by Harrison Ogborn, a resident of said Greensfork.

At Newark, Ohio, by Joshua Gibbs, a resident of said Newark.

At Crossinville, Ohio, by George P. Black, a resident of said Crossinville.

At Thompsonville, North Carolina, by Thomas Thompson, a resident of said Thompsonville.

At Lafayette, Alabama, by Joseph O. Ramage, a resident of said Lafayette.

At Pittsburgh, Pennsylvania, by D. B. Rogers, Seymour Rogers, and Luman Rogers, all residents of said Pittsburgh.

At Criglersville, Virginia, by Reuben M. Melton, a resident of said Creiglersville.

21 At Spring, Pennsylvania, by Morgan L. Rogers, a resident of said Spring.

At Whitepost, Charles County, Virginia, by W. F. Paget, a resident of said Whitepost.

At Stone Bridge, Charles County, Virgina, by Washington F. Paget, a resident of said Stone Bridge.

Which several uses are respectively known to the persons set forth as having made them, and to many others whose names these respondents cannot now give, but crave leave to add hereto when they have ascertained them.

8th. That prior to the alleged invention thereof by the said Matthew G. Slemmons, the supposed improvements described and claimed in said reissued letters patent No. 6131, or a material and substantial part thereof, were described or shown in the following printed publications, to wit:

"A Rudimentary Treatise on Agricultural Engineering," by G. H. Andrews, C. E., vol. 3, on Field Machinery and Improvements, published in London, England, in 1853, by John Weale, 59 High Holborn, pages 27 and 65.

"Encyclopedia Brittanica," English edition, volume 2, published in Boston, Massachusetts, in 1853, by Little, Brown & Co.; article, Agriculture; subarticle, Grubbers; pages 271 and 272.

22 "Chambers' Information for the People," published in 1842, by Wm. & Robert Chambers, at Edinburgh, Scotland, volume 2; article, Agriculture; pages 324, 325, & 326.

"The Farmers' and Mechanic Journal," published in 1848, volume 2, page 548, a copy of which may be seen in the library of the U. S. Patent Office.

On page 96 and 97, and plate 44, of a publication entitled "Bortard's Farm Implements," which publication may be seen in the library of the U. S. Patent Office.

9th. That said reissued letters patent granted Matthew G. Slemmons June 22d, 1869, were *incorporative*, or invalid by reason of said Slemmons having claimed therein as his invention more than he had a right to claim as new, or as his own invention; and that said error did not arise by inadvertence, accident, or mistake, but was the result of a fraudulent or deceptive intention; that the purpose and effect of the surrender and reissue thereof were to claim and appropriate inventions and improvements made by others prior to his said original alleged invention, and new and additional improvements made by others subsequent to the date of said original alleged invention, and forming no part of the thing intended to be secured by said original letters patent of October 9th, 1860.

10th. That the inventions described in said reissued letters patent No. 6131, and claimed in the several claims thereof, were expressly
23 disclaimed by said Slemmons before the extension of said reissued patent of June 22d, 1869; and that said patent was not extended as to the same.

11th. That the improvement shown and described in said original letters patent were not the invention of said Mathew G. Slemmons, but were jointly invented by him and one Elijah Laizure, then of Cadiz, Ohio.

12th. That said Slemmons had surreptitiously and unjustly obtained said patent for what was in fact invented by another who was using due and reasonable diligence in adapting and perfecting the same.

All of which matters and things these respondents are ready and willing to aver, maintain, and prove as this honorable court shall direct, and they pray to be hence dismissed, with their reasonable costs and charges, in this behalf wrongfully sustained.

BENJAMIN F. AVERY & SONS,
BENJAMIN F. AVERY,
SAMUEL AVERY, AND
GEORGE AVERY.

HATCH & PARKINSON,
Sol'rs & of Counsel.

UNITED STATES OF AMERICA,
District of Kentucky, ss:

Samuel L. Avery, of the firm of B. F. Avery & Sons, being duly sworn, deposes and says that he has read the foregoing answer subscribed by him, and that the statements therein contained are true, as he verily believes.

B. F. AVERY & SONS,
Per SAM'L L. AVERY.

24 Subscribed and sworn before me this 7th day of February, A. D. 1876.

SAM'L B. CRAIL,
U. S. Com'r.

And on another day of our said term of our said court, to wit, on Friday, February 11th, A. D. 1876, came the complainants, by M. D. Leggett, their counsel, and filed their replication herein.

Which said replication is in the words and figures as follows, to wit:

Circuit court of the United States, district of Kentucky. In equity.

WELLS W. LEGGETT AND LEVERETT L. LEGGETT
vs.
B. F. AVERY AND SONS, BENJAMIN F. AVERY, and George Avery.

The replication of the above-named complainants to the answer of the above-named defendants.

These repliants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exceptions, which may be had or taken to the manifold insufficiences of said answer, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in law to be answered unto; and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the
25 said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things these repliants are and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

M. D. LEGGETT,
Solicitor for Complainants.

And on another day of our said term of our said court, to wit, on 18th day of September, 1876, came the defendants, by Messrs. Hatch & Parkinson, their counsel, and filed their supplemental answer herein, which said supplemental answer above referred to is as follows, to wit:

United States circuit court, district of Kentucky, at Louisville. In equity.

WELLS W. LEGGETT & L. L. LEGGETT
vs.
BENJ. F. AVERY ET AL.

The joint and several supplimental and additional answer of Benjamin F. Avery, Samuel Avery, and George Avery, respondents, to the bill of complaint of Wells W. Leggett and Leverett L. Leggett, complainants.

Now come the respondents, and by leave of court, first had and obtained, file this their joint and several supplemental answer to the bill of complaint aforesaid.

26 And these respondents relying upon the matters and defenses set forth in their original answer, by way of further defense say, on information and belief, that the alleged inventions and improvements described and claimed in the reissued letters patent, No. 6131, mentioned in the bill of complaint were, long prior to the manufacture or use, or alleged invention thereof by said Matthew G. Slemmons, and long before his application for a patent therefor, in public use, and on sale in this country, at the following places, to wit:

At Cadiz, Ohio, where they were used by James Ryburn, of Heyworth, Illinois, and Joseph Ryburn, of Bloomington, Illinois, which use is known to said Ryburns, who now reside and may be found respectively at said Heyworth & Bloomington.

At Cadiz aforesaid, where they were used by James B. Jamison, of said place, which use is known to said Jamison, who now resides and may be found at said Cadiz.

At Cadiz aforesaid, by Abraham Bushby, of said place, who now resides and may be found at said Cadiz.

At Cadiz aforesaid, where they were publicly made and sold by Elijah Laizune, of said Cadiz, which manufacture and use are known to John Miller, of New Concord, in Muskingum Co., Ohio; to Elza M. Scott, and John Scott, of Cambridge, Ohio.

At Cadiz aforesaid, where they were publicly made and sold by Louis Ryan, which manufacture and sale are known to said Ryan and J. Campbell, of said Cadiz, O.

27 At Cadiz aforesaid, and throughout Harrison County, where they were sold by Stewart McCoy, deceased, which sales were known to Nathan McCoy, of said Cadiz.

At New Athens, Ohio, where they were made and sold by Alex. Wilson, residing at Renard, Wayne County, Illinois, which manufacture and sale are known to N. A. Hanna, of Cadiz, Ohio.

At White Post, in Clark County, Virginia, where they were made and sold by one Wolf, whose first name and present residence these know not, which manufacture and sale are known to Washington F. Leggett, now residing at Fremont, Clark Co., Ohio.

Which several uses are also known to many other persons, whose names and residences these respondents crave leave to add hereto, when they have ascertained the same.

All of which matters and things these respondents are ready and willing to prove, and they pray as they have heretofore prayed.

BENJ. F. AVERY.
SAM'L L. AVERY.
GEORGE C. AVERY.

HATCH & PARKINSON,
Sol'rs & of Counsel for Def'ts.

SEPT. 18TH, 1876.

We hereby consent to the filing of the above amended answer. The replication already filed to apply to this amended answer.

M. D. LEGGETT & CO.,
For Complainants.

28 UNITED STATES OF AMERICA,
District of Kentucky, ss:

Sam'l L. Avery, one of the firm of Benjamin F. Avery & Sons, being duly sworn, deposes and says that he has read the foregoing answer by him subscribed, and that the statements therein contained, are true, as he verily believes.

SAM'L L. AVERY.

Sworn to before me this 26th day of September, 1876.

SAM'L B. CRAIL,
Clerk U. S. Cir. C't, K'y Dist.

And at another term of our said court held for its October term, 1876, to wit, on Wednesday, January 31st, A. D. 1879, came the defendants, by Messrs. Hatch & Parkinson, their counsel, and filed their supplimental answer herein.

United States circuit court, district of Kentucky. In equity.

WELLS W. LEGGETT & L. L. LEGGETT
vs.
B. F. AVERY ET AL.

The joint and several supplimental and additional answer of Benjamin F. Avery, Samuel Avery, and George Avery, respondents, to the bill of complaint of Wells W. Leggett and L. L. Leggett, complainants.

29 Now come the respondents, and by leave of court first had and obtained, file this their joint and several supplimental answer to the bill of complaint aforesaid.

And these respondents relying upon the matters and defenses set forth in their original answer, by way of further defense say, on information and belief that the alleged inventions and improvements described and claimed in the reissued letters patent, number 6131, mentioned in the bill of complaint, were not invented by the said Matthew G. Slemmons, but were long prior to the manufacture or use, or alleged invention thereof, by the said Matthew G. Slemmons, and more than two years before his application for a patent therefor, in public use and on sale in this country at the following places, to wit:

At Smyrna, Ohio, where they were made and sold by Frank Gilmore, of Muscatine, Iowa, and James S. Gilmore, of Aledo, Illinois, which manufacture and sale is known to said James S. Gilmore, who now reside at said Aledo; also to J. M. Bendure and John Phincin, who now reside and may be found at Morefield, Ohio, and William Romans, now residing and may be found at Smyrna, Ohio.

At Smyrna, Ohio, where they were used by Elias J. Phipp, which use is known to said Phipp, who now resides and may be found at said
30 Smyrna.

At Cassville, Ohio, when they were used by John W. J. Alexander, of Uhricksville, Ohio, which use is known to said Alexander, who now resides and may be found at said Uhricksville; also to James Kirkpatrick,

Westley Johnson, William Johnson and other, who now reside and may be found at said Cassville, Ohio.

At Franklin, Harrison County, Ohio, where they were used by William Guillan, of Uhricksville, Ohio, and Edwards, of Trenton, Ohio, which use is known to said William Guillan and Edwards, who reside and may be found at said Uhricksville and Trenton, respectively.

At Cadiz, Ohio, where they were used by Andrew McBarnes, of Uhricksville, Ohio, and John Haverfield, of Cadiz, which use is known to said Andrew McBarnes, who now resides and may be found at said Uhricksville, Ohio.

At Harrison County, Ohio, where they were used by Benjamin Anderson and others, whose names these defendants have not yet been able to learn, which use is known to John Lane and Samuel Weaver, who now reside and may be found at Aledo, Illinois.

At Cassville, Ohio, by James Kirkpatrick of said Cassville, which use is known to said Kirkpatrick, who now resides and may be found
31 at said Cassville; also William Johnson and Westley Johnson, who now reside and may be found at said Cassville, Ohio; and John Alexander, who now resides and may be found at Uhricksville, Ohio.

At Cadiz, Ohio, where they were made and sold by John Helton, of Bloomington, Illinois, which manufacture and sale is known to said Hilton, who resides and may be found at said Bloomington; also to Barich Aglum, of Renosville, Ohio, who now resides and may be found at said Renoesville; also to many others whose names and present residences these defendants have been unable to learn, and which they crave leave to add hereto when they have ascertained the same.

BENJ. F. AVERY.
SAML. L. AVERY.
GEORGE AVERY.

HATCH & PARKINSON,
Sol'rs for Defendants.

UNITED STATES OF AMERICA,
District of Kentucky, ss:

Benj. F. Avery, one of the firm of B. F. Avery & Sons, well known to me, being duly sworn, deposes and says that he has read the foregoing answer subscribed by him, and that the statements therein contained are true, as he verily believes.

B. F. AVERY.

S. L. AVERY,
N. P., Jeff. Co., Ky.

JANUARY 29TH, 1877.

We hereby consent to the filing of the above amended answer,
32 the replications already filed to apply to this amended answer.

M. D. LEGGETT & CO.,
For Complainants.

And on another day of our said term of our said court, to wit, on Wednesday, February 14th, 1877, came the defendants, by their counsel, and tendered their cross-bill and moved the court to file the same, and the court not being advised, takes time.

And at another term of our said court held for its February term, 1877, continued and held, to wit, on Friday, March 2nd, 1877, the court being now fully advised of and concerning the motion of the defendants to file their cross bill herein, it seems to the court that the law is for the defendants.

It is therefore considered by the court that said motion be and the same is hereby sustained, and it is ordered that said cross-bill be and the same is hereby filed.

The cross cross-bill above referred to is as follows, to wit:

Circuit court of the United States, district of Kentucky. In equity.

WELLS W. LEGGETT AND LEVERETT L. LEGgett
vs.
BENJAMIN F. AVERY, SAMUEL AVERY, AND George Avery and B. F. Avery & Sons.

To the honorable the judges of the circuit court of the United
33 States in and for the district of Kentucky :

Your orators, Benjamin F. Avery, Samuel Avery, George Avery and B. F. Avery & Sons, the defendants in the above-entitled cause, by leave of court first had and obtained, bring this their cross-bill against Wells W. Leggett and Leverett L. Leggett, the complainants in this cause of complaint, show unto your honors that in or about the year 1854, one Elijah Laizure, of Cadiz, County of Harrison, State of Ohio, believing himself to have discovered certain new and useful improvements in double shovel plows, described the said improvements to one Matthew G. Slemmons, then residing near him in said Cadiz, which said improvements consisted, among other things, in forming said double shovel plow with two diverging beams bent to form shovel standards, the said *beings* being fastened rigidly together at and springing from the point of attachment for the draft, and their front ends being merged into a device whereby the plow could be attached to the draft; that thereupon the said Matthew G. Slemmons, not being the inventor or contriver of said improvements, well knowing that he, the said Matthew G. Slemmons, was not the original and first inventor of the same, did, on or about the 15th day of January, 1855, fraudulently and surreptitiously proceed, without the knowledge or consent of said Elijah Laizure, to apply to the Commissioner of Patents of the United States for
letters patent of the United States for said *said* improvements in
34 double shovel plows, as so communicated to him by said Elijah Laizure, to be granted to him, *by* said Matthew G. Slemmons, as the inventor thereof, and did in said application make oath that he believed himself to be the original and first inventor thereof, well knowing that the same was not true, a certified copy of which application and the files of the Patent Office thereto pertaining are now of record in this cause.

That thereupon, before the issue of letters patent to Matthew G. Slemmons, said Elijah Laizure sent to the said Commissioner of Patents his protest against said proceedure on the part of said Matthew G. Slemmons, wherein he alleged and set forth that said Matthew G. Slemmons was not the inventor of said improvements, but had obtained the same from him, said Elijah Laizure, and notifying the said Commissioner that he wished to contest the said claim of said Matthew G. Slemmons, which said protest and statement of said Elijah Laizure was thereupon placed

on file with the said application of said Matthew G. Slemmons in the said Patent Office, and made a part of said bill, and is now of record in this cause.

That thereupon said Matthew G. Slemmons went to said Elijah Laizure and offered him one-half interest in the letters patent so applied for by him if said Elijah Laizure would withdraw his opposition to the issue of said letters patent, which said proposition was accepted by said Elijah Laizure, and a contract in writing made between said Slemmons and Laizure embodying said agreement, which said contract, or a duly authenticated copy thereof, is now of record in this cause.

That thereupon said Elijah Laizure sent to the said Commissioner of Patents a written statement setting forth that the difficulty between him, said Elijah Laizure, and said Matthew G. Slemmons had been amicably settled, and that he, said Elijah Laizure, did not intend to set up any further claim for a patent on the said improvement in the Patent Office, which said written statement was placed on file with the said application of said Matthew G. Slemmons, in the said Patent Office, and made a part of said files, and is now a part of the record in this cause.

That thereafter, and about five years after his said first application, said Matthew G. Slemmons, upon an amendment of his said original petition, obtained letters patent granted to him as inventor, for the combination of two certain shoulder-beams, a certain clevis, certain transverse bars, certain slotted adjustable forked handles, and certain notched and mortised shovels, when all constructed, arranged and used in combination in the manner particularly in said letters patent set forth; that this was the only invention for which said letters patent were granted, which said letters patent are by a certified copy a part of the record in this cause; that all the features of this plow, described and claimed in said letters patent, which were not originally suggested to said Matthew G. Slemmons by said Elijah Laizure as aforesaid, were jointly contrived and constructed by said Laizure and said Slemmons, and were not, any of them, either separately or in the said combination, the sole invention of said Slemmons, which was well known to him, the said Slemmons, when he applied for and obtained said letters patent.

That on or about the 22nd day of June, 1869, said Matthew G. Slemmons did, upon his application therefor, obtain a reissue of said letters patent, numbered 3514, in which reissue were inserted the following claims:

"1st. To converging beams A A, each one of which has a shovel standard, *a*, formed by bending its rear end, substantially as described.

"2nd. The converging beams A A, connected together, and constructed with curved shovel standards, *a a'*, upon them, substantially as described.

"3rd. The union of the front ends of plow-beams, which have their rear ends bent to form shovel standards by means of a clevis or devices by which the team is hitched to the implement, substantially as described.

"4th. The converging plow-beams A A, having shovel standards, *a a'*, formed on them, in combination with handles, F F, and handle supporting braces E E, substantially as described.

"5th. In combination with the foregoing the manner substantially as described of adjusting the handles F F, and securing them to the beams at any desired angle.

"6th. Constructing of one piece of metal a plow-beam, A, and a curved shovel standard, a^1, with a shoulder, *d*, formed on the latter, substantially as described."

Which said claims were for features of the said plow not invented or contrived by said Slemmons, but communicated to him by said Laizure as aforesaid, as was well known to him, said Slemmons, at the time for applying for and obtaining said reissue; which said claims were also for other and different alleged inventions than that for which said original letters patent were granted, or designed to be granted, and for alleged improvements not omitted to be claimed in said original letters patent by either accident, inadvertence, or mistake, but were fraudulently and for the purpose of deceiving, defrauding, and imposing upon the public, inserted in said reissue by said Slemmons.

That afterwards, to wit, on or about the 23rd day of February, 1874, the complainants in this cause, Wells W. Leggett and Leverett L. Leggett, well knowing each and every of the facts hereinbefore set forth, and with the intent of using the said letters patent as a means of exacting royalties and settlements from the public, did obtain all the title in and under said reissued letters patent, which they now pos-
38 sess as set forth in their of complaint herein, and also made a contract with said Slemmons by which the extension of said letters patent was to be applied for & secured for the benefit of said Wells W. Leggett and Leverett L. Leggett, and the exclusive title to said extended term vest in them; that under and in accordance with said contract, an application for the extension of said letters patent was made, as set forth in their bill of complaint.

That many appeared in behalf of themselves and the public, and opposed the said extension, and showed to the satisfaction of the Commissioner of Patents that said Slemmons was not the first or original inventor of double shovel-plows constructed with two diverging beams being fastened rigidly together at and springing from the point of attachment for the draft, and having their front ends merged into a device whereby the plow could be attached to the draft, or of any of the alleged improvements claimed in the first, second, third, fourth, and sixth claims of said reissue. Whereupon the said Commissioner refused to grant said extension, unless the said Slemmons disclaim all said claims.

That said Slemmons, with the knowledge and advice of said complain-
ants, thereupon filed his formal disclaimer of all the alleged im-
39 provements recited in said first, second, third, fourth, and sixth claims of said reissue, a certified copy of which disclaimer is of record in this cause; that thereupon, and in consequence of said disclaimer and of the fact that the remaining claim covered only features of no value to the public, all opposition to said extension was withdrawn, and said extension granted for the alleged improvements recited in the said fifth claim only, which related merely to a mode of adjusting the handles of the plow, never employed in the manufacture or use of said plows.

That said Wells W. Leggett, and Leverett L. Leggett, the complainants in this cause, were both the attorneys and the interested parties who conducted the said application for extension, and all steps taken therein were taken with their full knowledge and consent, and by their direction and procurement.

That thereupon, immediately after the said extension, they, the said Wells W. Leggett and Leverett L. Leggett, applied for a reissue of said letters patent, with claims for the same alleged improvements as those

already formally disclaimed as aforesaid, and on condition of the disclaimer of which the opposition to said extension was withdrawn and said extension granted as aforesaid; that said reissue was refused
40 by the principal examiner in charge of the department of the Patent Office to which it was assigned as being for the alleged improvements expressly disclaimed as aforesaid; that it was then taken by appeal to the board of examiners in-chief, and refused by said board for the same reasons; that it was then taken by appeal to the Commissioner, who, upon the personal solicitation of said complainants, Wells W. Leggett and Leverett L. Leggett, ordered said reissue to be granted, in fraud, as your orators allege, of the rights of the public and contrary to law.

That said last-mentioned reissue was numbered 6131, and granted November 10th, 1874, and contained, among others, the following claims:

"1. Two diverging beams, A A, that have their rear ends bent to form shovel standards, the said beams being fastened rigidly together, substantially as described, to and springing from the point of attachment for the draft.'

"2. Two diverging beams, A A, that have their rear ends bent to form shovel-standards and their front ends fastened rigidly together, and merged into a device, substantially as described, whereby the plow may be attached to the draft."

Which said claims are for the same alleged improvements as those communicated to said Matthew G. Slemmons by said Elijah Lazare as aforesaid, and also for the same improvements as those expressly
41 disclaimed upon the extension of said letters patent as aforesaid, and for other and different alleged inventions from that for which said original letters patent were granted, or intended to be granted, and which were inserted, as your orators allege and believe, by said complainants for the purpose of extorting from the public settlements and royalties to which they were not by law entitled; all of which will more fully appear by said last named letters patent, now of record in this cause.

That afterwards said Wells W. Leggett and Leverett L. Leggett applied to your orators to settle for infringement of said last mentioned letters patent, requiring of them the payment of many thousand dollars for said alleged infringement, and threatening that if they refused, they, the said Leggetts, would commence suit against them, your said orators, upon said letters patent, and advertise said suit extensively, and threaten patrons and vendees of your orators with suit unless they ceased to deal with your orators, and greatly damage your orators and interrupt their business during the pendency of said suit.

That the devices made and sold by your orators thus alleged to infringe said last reissued letters patent, were double shovel plows which had been made by your orators for many years unmolested, and
42 which, so far as the features alleged to infringe were concerned, had been in public and general use in this country for about thirty years or more.

That said plows made and sold by your orators did not contain, and were not alleged to contain, the alleged invention for which said original letters patent were granted to said Matthew G. Slemmons, or the alleged invention for which said first named reissue was extended, but were only alleged by said complainants to infringe the two claims last recited, and which your orators allege were fraudulently introduced into said reissue. That your orators being satisfied that these complainants had no just claim or cause of action against them, refused to pay them

the money demanded by them, whereupon the said Wells W. Leggett and Leverett L. Leggett commenced this suit against your orators and proceeded to threaten their patrons and vendees with suit unless they ceased to purchase of them, and advertised this suit extensively throughout the country for the purpose of destroying the business of your orators, well knowing that they had no just claim against them.

That your orators were forced to appear and employ counsel and defend said suit at great expense; that they were obliged to spend large sums of money and much time and labor in the conduct and management of their necessary defense.

43 That their business has been interrupted and disturbed by said wrongful conduct of said complainants, and especially by the commencement and prosecution of this suit, and the advertising and threatening to commence suit against their vendees as aforesaid, and they have been deprived of many thousands of dollars thereby.

That they have shown not only the fraudulent character of said reissued letters patent herein sued upon, but have also shown by evidence now of record in this cause that all the alleged improvements which they have been thus sued for using, were, many years before the alleged invention of said Matthew G. Slemmons, to wit, as early as 1878, or before, in public and common use in various parts of this country and among other places in the vicinity where said Matthew G. Slemmons lived at the time of his first application for letters patent as aforesaid, and had lived for many years prior to said time, and that all said improvements had long before his alleged invention been fully described and shown in letters patent of the United States, and other printed publications, and this suit so commenced is still pending and being prosecuted by said complainants in this court.

And forasmuch as your orators have been greatly damnified by the said wrongful conduct of these complainants, and have no remedy except in this court, they pray that this cause may be referred to a mas-

44 ter to take an account of the damages suffered by them thereby, and of all the expenses they have incurred in the defense of this suit, and that the same may be awarded them by this court, and that these said complainants may be enjoined by the decree of this court from further prosecuting them upon said last reissued letters patent, and from further threatening their patrons and vendees, or advertising them as infringers, and for such other and further relief as the equities of this case may require and to your honors may seem meet.

B. F. AVERY & SONS.
B. F. AVERY.
SAM'L S. AVERY.
GEORGE C. AVERY.

HATCH & PARKINSON,
Sol'rs & of Counsel for Def't.

UNITED STATES OF AMERICA,
District of Kentucky, ss:

Samuel L. Avery, one of the above named defendants, being duly sworn, deposes and says that he has read the foregoing cross bill by him subscribed, and that the statements therein contained are, to the best of his knowledge and belief, true.

SAM'L L. AVERY.

Sworn to before me this 14th Feb'y, 1877.

SAM'L B. CRAIL,
U. S. Com'r.

And on another day of said term of our said court, to wit, on Friday, May 11th, 1877, came the complainants, by Messrs. Christy & Leggett, their counsel, came also the defendants, by Messrs. Hatch & Parkinson and Harlan & Wilson, their counsel.

45 The evidence and arguments of counsel were heard, and the court not being advised of the decree which is proper to render herein takes time.

And at another term of our said court held for its October term, 1877, to wit, on Saturday, December 1st, 1877, the court being now fully advised of the decree which it is proper to render herein, it is now ordered and decreed that the bill of complaint herein be, and the same is hereby, dismissed.

It is further ordered and decreed that the defendants recover of the complainants their costs herein expended.

And on another day of said term of our said court, to wit, on Monday December 10th, 1877, came the complainants, by Messrs. M. D. Leggett & Co., their counsel, and filed their petition for a rehearing herein, which is as follows:

In the U. S. circuit court, district of Kentucky. In equity.

WELLS W. LEGGETT ET AL.
v.
B. F. AVERY ET AL.

And now come the complainants in the above entitled cause & petition this honorable court for a rehearing pursuant to the suggestion set forth in its decision based upon the arguments heretofore presented.

46 And the complainants would respectfully ask that they be notified of the time when said rehearing, if granted, may be had.

M. D. LEGGETT & CO.
Compl'ts' Sol'rs.

And on another day of said term of our said court, to wit, on Wednesday, Dec. 26, 1877, came the parties, by their counsel, and the court having considered the petition for a rehearing filed by the complainants herein, it is therefore ordered and decreed that a rehearing be granted the said complainants.

And at another term of our said court, held for its February term, 1878, to wit, on Thursday, March 28th, 1878, this cause again coming on to be heard, and the court being fully advised thereof, it seems to the court the equity is for the defendants. It is therefore decreed and ordered that the complainants' bill of complaint be and the same is hereby dismissed.

It is further decreed and ordered that the defendants recover of the complainants their costs herein expended.

Thereupon the complainants pray an appeal from said decree to the Supreme Court of the United States, which is granted.

And on another day of said term of our said court, to wit, on Friday, May 31st, 1878, came the complainants, by their counsel, and filed their appeal bond herein, which is as follows:

47 Circuit court of the United States, district of Kentucky.

WELLS W. LEGGETT AND LEVERETT L. LEGGETT
vs.
BENJAMIN F. AVERY, SAMUEL AVERY, AND GEORGE AVERY.

Know all men by these presents, that we, Wells W. Leggett, Leverett L. Leggett and M. D. Leggett and A. B. Dean are held and firmly bound unto Benj. F. Avery, Sam'l Avery, & George Avery in the sum of eight hundred and seventy-two $\frac{02}{100}$ dollars, to be paid to the said Benj. F. Avery, Sam'l Avery, and George Avery, their executors or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors and administrators firmly by these presents, sealed with our seals, and dated this thirty-first day of May, A. D. 1878.

Whereas the above-named Wells W. Leggett and Leverett L. Leggett hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Kentucky, at Louisville:

Now, therefore, the condition of this obligation is such, that if the above-named Wells W. Leggett and Leverett L. Leggett shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be
48 void; otherwise the same shall be and remain in full force and virtue.

WELLS W. LEGGETT. [SEAL.]
LEVERETT L. LEGGETT. [SEAL.]
M. D. LEGGETT. [SEAL.]
A. B. DEAN. [SEAL.]

Approved May 31, 1878.

BLAND BALLARD,
U. S. Dist. Judge.

49 *Memorandum. Opinion of the court.*

W. W. LEGGETT ET AL.
vs.
B. F. AVERY ET AL.

I have bestowed on this case much study. On some of the points in the case my mind still remains in doubt, but on others I have arrived at a reasonably satisfactory conclusion. I have now time only to announce my conclusion; I will, however, avail myself of the earliest leisure moment to prepare a written opinion.

First. I have much doubt whether the application of 1860 can be considered as a continuation of the application of 1855, because in the application of 1860 no reference whatever is made to the former application, & because it seems to describe a different invention. The
50 invention claimed in the application of 1855 is for improvements in separate parts of the plow, whilst in the application of 1860 the patentee expressly disclaims having invented any one part of the plow or the operation of any one part; he claims only a combination of parts, & there is no hint that he invented any of the parts separately. If the patentee's application for the patent which was granted to him

is to be considered as having been first made in 1860, then it is clear that his patent is void, because he publicly sold many plows of the kind patented, more than two years before he made his application.

Second. Disregarding the application of 1855 & treating that
51 of 1860 as embodying the patentee's invention, then I should be inclined to think that the reissue of 1869 is void, because it is not for the same invention described in the patent of 1860. The reissue of 1869 certainly embraces as the patentee's invention separate parts of the plow, &, as I have already said, the patent of 1860 is only for a combination; so far from embracing the separate parts, they are expressly disclaimed.

Third. But, treating the application of 1860 as a continuation of that made in 1855, I am inclined to think that the patentee was anticipated in his invention. There is no pretence that Slemmons made his invention prior to 1852, & the evidence that Gilmore made plows embodying all the features of the invention prior to this time is so strong
52 that I am inclined to think the court is not at liberty to disregard it.

Fourth. Considering the state of the art at the time Slemmons is said to have made his invention, I have much doubt whether anything patentable was invented by him, except what is claimed in his patent relating to the arrangement and adjustability of the handles. The specification of 1855 does not particularly describe the manner in which the two plow-beams are brought & fastened together, & it certainly does not claim that this manner is new; on the contrary, it declares that an iron clevis is attached to the point of the beams in the ordinary method.

I am not prepared to admit that the bringing together of two
53 plow-beams which were old & fastening them by a device which was old is patentable.

Fifth. I am of the opinion that the reissued patent of November, 1874, is void, because it embodies a different invention from the patented invention which was extended, & because it embraces as the invention of the patentee what he had disclaimed as a condition precedent to the extension of his patent. My opinion is that whilst the Commissioner of Patents may, through the process of reissue, correct any error committed by himself in the granting of original patents, such as the wrongfully requiring of the patentee to disclaim what he had really invented, he has no such power in respect to an extended patent;
53½ he has no power to extend a patent after it has expired, and though he may by means of a reissue allow a patentee to correct inadvertencies and mistakes of an extended as well as of an original patent, he cannot, under the guise of a reissue, reverse a decision made by himself on the application for an extension.

I shall, therefore, direct complainants' bill to be dismissed with costs, but if complainants shall within two weeks file a petition for a rehearing, I shall probably grant it and direct a reargument. I adopt this course because the point on which the case is decided was not very fully argued at the former hearing, & because now, since I have studied the case, I am much better prepared to appreciate a full discussion of all the points in it.

54 The clerk is directed to send a copy of this memorandum to counsel.

A copy.
Att:

SAML B. CRAIL, *Clerk.*

55 United States circuit court, district of Kentucky. In equity.

WELLS W. LEGGETT AND LEVERETT L. LEGgett
vs.
B. F. AVERY & SONS, BENJAMIN F. AVERY, Samuel Avery, George Avery. } No. 3016.

COMPLAINANTS' RECORD.

M. D. Leggett & Co., solicitors for complainants.

(Here follow 3 diagrams, marked pages 56, 56*a*, and 56*b*.

57 *Notice.*

United States circuit court, district of Kentucky. In equity.

WELLS W. LEGGETT AND LEVERETT L. LEGgett
vs.
B. F. AVERY AND SONS, BENJAMIN AVERY, et al. } 3016.

Messrs. B. F. Avery & Sons et al., defendants, or Hatch & Parkinson, defendants' solicitors:

GENTLEMEN: Take notice that on Tuesday, May 9th, 1876, at Cleveland, Ohio, before Francis Toumey, notary public, or other duly qualified officers, at the office of M. D. Leggett & Co., beginning at 10 o'clock a. m., we will take the depositions of witnesses on behalf of complainants in the above entitled cause, and will continue from day to day. You are invited to attend and cross examine the witnesses.

Respectfully, &c.,

M. D. LEGGETT & CO.,
Complainants' Solicitors.

58 United States circuit court, district of Indiana. In equity.

WELLS W. LEGGETT AND LEVERETT L. LEGgett
vs.
WAYNE AGRICULTURAL WORKS, L. L. Lawrence, et al. } 1028.

Wayne Agricultural Works, L. L. Lawrence, et al., defendants, or Hatch & Parkinson, defendants' solicitors:

GENTLEMEN: Take notice that on Tuesday, May 9th, 1876, at Cleveland, Ohio, before Francis Toumey, notary public, or other duly qualified officer, at the office of M. D. Leggett & Co., beginning at 10 o'clock a. m., and continuing from day to day, we will take the depositions of witnesses on behalf of complainants, in the above entitled cause. You are invited to attend and cross examine the witnesses.

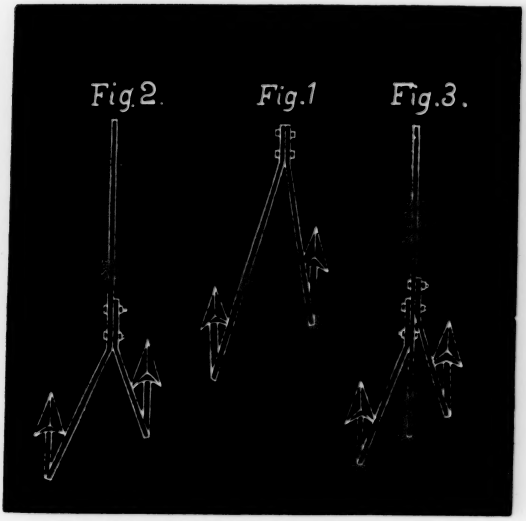
Respectfully, &c.,

M. D. LEGGETT & CO.,
Complainants' Solicitors.

No. 755
Leggett
v.
Avery
page 56

COMPLAINANTS' EXHIBIT

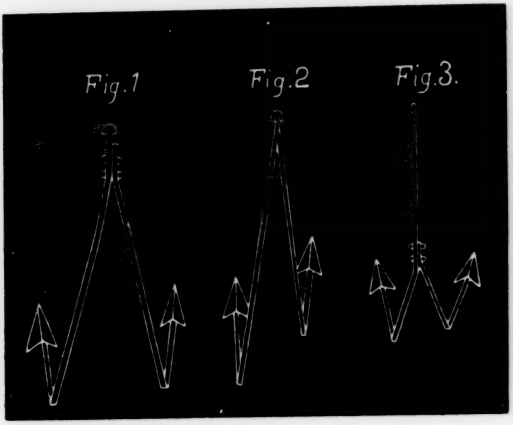
PAGETT 1.



No. 755
Leggett
v.
Avery
page 56a

RESPONDENTS' EXHIBIT.

PAGETT 2.



No. 755
Leggett
v.
Avery
page 56

RESPONDENTS' EXHIBIT.

PAGETT 3.

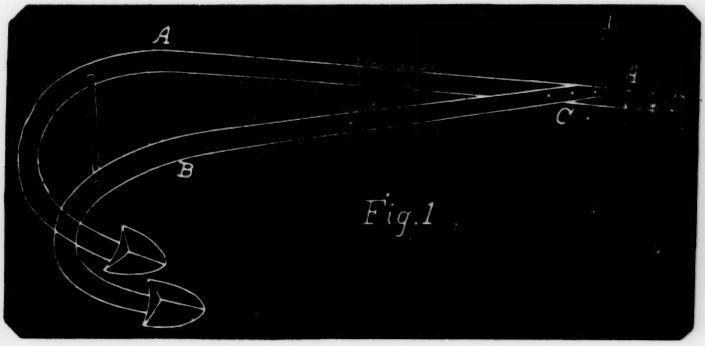


Fig. 1

59 *Stipulation as to testimony.*

United States circuit court, district of Kentucky. In equity.

WELLS W. LEGGETT AND LEVERETT L. LEGGETT
vs.
B. F. AVERY ET AL. } 3016.

It is here stipulated and agreed that the testimony in the above-entitled cause may be taken by questions and answers, orally, before any duly qualified notary public, or United States commissioner, after due notice, and the testimony in case of same complainants against Wayne Agricultural Co. et al., district of Indiana, may be used herein, so far as relevant to the issues.

M. D. LEGGETT & CO,
Complainants' Solicitors.
HATCH & PARKINSON,
Defendants' Solicitors.

CLEVELAND, OHIO, *May 5th*, 1876.

60 United States circuit court, district of Indiana. In equity.

WELLS W. LEGGETT AND LEVERETT L. LEGGETT
vs.
WAYNE AGRICULTURAL WORKS ET AL. } 4028.

It is here stipulated and agreed that the testimony in the above entitled cause may be taken by question and answer, orally, before any duly qualified notary public or United States commissioner, after due notice, and the testimony in case of same complainants against B. F. Avery et al., district of Kentucky, may be used herein, so far as relevant to the issues.

M. D. LEGGETT & CO.,
Complainants' Solicitors.
HATCH & PARKINSON,
Defendants' Solicitors.

CLEVELAND, OHIO, *May 5th*, 1876.

61 *Stipulation as to implements.*

United States circuit court, district of Indiana. In equity.

WELLS W. LEGGETT ET AL.
vs.
WAYNE AGRICULTURAL WORKS ET AL. } 4028.

AND

United States circuit court, district of Kentucky. In equity.

WELLS W. LEGGETT ET AL.
vs.
B. F. AVERY & SONS ET AL. } 3016.

It is here admitted by the defendants, Wayne Agricultural Co. et al.,

that they have manufactured and sold since the date of reissue letters patent No. 6131, and prior to the commencement of this suit, implements like the Complainants' Exhibit, Wayne Cultivator, and the defendants B. F. Avery & Sons et al. admit that subsequent to the date of said reissue letters patent No. 6131, and prior to the commencement of this suit, they manufactured and sold implements like the Complainants' Exhibit, B. F. Avery & Sons' Plow.

HATCH & PARKINSON,
Solicitors for Defendants.

CLEVELAND, OHIO, *May* 9, 1876.

62 *Testimony of Isaac V. Holmes.*

United States circuit court, district of Indiana. In equity.

WELLS W. LEGGETT AND LEVERETT L. LEGGETT *vs.* WAYNE AGRICULTURAL WORKS ET AL. } 4028.

AND

United States circuit court, district of Kentucky. In equity.

WELLS W. LEGGETT AND LEVERETT L. LEGGETT *vs.* B. F. AVERY ET AL. } 3016.

Examination of witnesses on behalf of the complainant, in the above-entitled cause, under notices hereto attached.

Present, M. D. Leggett & Co., for complainant, and John E. Hatch, esq., of Hatch & Parkinson, for defendants.

63 At office of M. D. Leggett & Co., Cleveland, Ohio, before Francis Toumey, notary public, Tuesday, May 9th, 1876.

ISAAC V. HOLMES being called by complainant, and being first duly sworn, deposes and says, in answer to interrogatories propounded to him by W. W. LEGGETT, Esq., of said M. D. Leggett & Co., as follows, to wit:

Q. What is your name, age, residence and occupation?

A. Isaac V. Holmes; 45 years old; a mechanical engineer by profession; residence, Cleveland, Ohio.

Q. Please state what experience you have had in practical mechanics that will enable you to testify as an expert in these cases here in controversy.

A. I have been engaged for the past twenty-five years as a constructor of machinery and practical draftsman; that my experience has been varied with regard to all kinds of machinery; and I was for eight years superintendent of construction at the Novelty Iron Works, New York, and for five years constructing engineer in charge of a manufacturing establishment at Mt. Vernon, Ohio, and I have been accustomed to examine and analyze various mechanical constructions, to make comparisons between similar mechanical devices, and give opinions in regard to their difference or similarities. I have been examined as an expert in various patent cases within the past year.

Complainant's counsel here produces in evidence a certified copy from the records of the United States Patent Office of the reissued letters patent granted to Leggett & Leggett, dated Nov. 10, 1874, No. 6131, and marks the same Complainant's Reissue; and also produces a wheel cultivator and marks the same Complainant's Exhibit Wayne Cultivator.

Also produces a double shovel iron plow, and marks the same
64 Complainant's Exhibit B. F. Avery & Son's Plow. Also, introduces a certified copy from the records of the Patent Office of the model in the matter of letters patent granted to M. G. Slemmons, dated October 9th, 1860, No. 30357, reissued June 22d, 1869, No. 3514, extended Oct. 5, 1874, and reissued Nov. 10th, 1874, No. 6131, and assigned to Leggett & Leggett, for plow, and marks the same Complainant's Exhibit Original Model.

(To which counsel for respondents objects.)

Q. 3. Please examine the Exhibit Complainants' Reissue and the two exhibits marked respectively Complainants' Exhibit Wayne Cultivator and Complainants' Exhibit B. F. Avery & Son's Plow, and give your understanding of the claims in the said reissued letters patent, and what bearing the said claims (especially the first and second of said claims) have upon the implements shown in the said exhibits; and you may refer also to the said model marked Complainants' Exhibit Model.

A. Upon examining the Exhibit Complainants' Reissue, I find there is shown a device to be used as a plow, composed of two beams, which are united at the forward ends and diverging therefrom; the rear ends of the said beams are curved gradually downward to provide supports for the shovels. At the forward ends where these two beams are united they emerge into a form suitable to receive the attachment for the draft. I also find at a suitable distance from the united ends of these two beams a connecting piece, marked D, for the purpose of retaining these beams in the proper relative position to each other; and that in the description in the letters patent it speaks of this bar being arranged so as to be adjusted nearer to or further from the clevice for the pur-
65 pose of expanding or contracting the beams and their shovel standards more or less, as may be required—these two beams springing sufficiently to allow of said adjustment.

Upon comparing Complainants' Exhibit Model, as shown, with the drawings of the Exhibit Complainants' Reissue, I find the form of the device where the two beams are united to be somewhat different in the model. The form is such that a pin for attaching the plow to the draft device is placed vertical, while in that shown in the drawing attached to the reissue the device is so formed that this pin for the attachment of the draft is placed horizontal. I also find in the specification of complainants' reissue the following language:

"In the accompanying drawings A A represents the metal plow-beams, which are connected together so as to converge toward their front ends, at which point these beams are suitably connected rigidly together, and provided with a clevice B, which may be pivoted to the transverse pin G, as shown in the drawings, or they may be applied in any other suitable manner, or any other suitable clevice device may be employed, whereby the plow may be connected with the draft, and whereby a strong hitching attachment is effected."

Upon turning now to the Exhibit Wayne Cultivator, I find a device constructed of two plow-beams similar in form to those shown in complainants' reissue; that at the forward end these two beams are brought close together, and interposed between them is a strip of metal, forming the boss or hub, for attachment to the draft; that these two beams and

this strip are rigidly united by through bolts, so that that part of the device becomes substantially united, and for the same purpose
66 as that part of the device shown in complainant's model. At a suitable distance from the point where these two beams are rigidly united, I find a cross-bar for the purpose of holding these diverging plow-beams in proper position to each other substantially the same as shown in the drawings, Complainant's Exhibit Reissue, and also in Complainant's Exhibit Model.

Upon examining the Complainants' Exhibit B. F. Avery & Son's Plow, I find a structure composed of two diverging plow-beams united rigidly at their forward ends by being welded to each other; and that this portion of the metal so united is drawn out into a properly formed hook, to which the draft of the plow is attached. I also find these two diverging plow-beams have their rear ends bent downward and around to a proper form to support the shovels to which they are attached; that at a suitable distance between these diverging beams is placed a cross bar for the purpose of keeping them in proper position to each other; and that by altering the position of this bar these two diverging beams can be sprung apart, or brought nearer together, to adjust them to different kinds of work.

I, therefore, upon comparing these two devices, namely, the Wayne Cultivator and B. F. Avery & Son's plow, with the two first claims set forth in the Complainants' Exhibit Reissue, find these two devices to consist of two diverging beams rigidly fastened together at their forward ends; one by means of bolts, the other by welding; that this point where they are united is substantially the same as claimed as springing from the point of attachment or merged into a device whereby the plow is attached to the draft, and these two diverging
67 plow-beams have their rear ends bent in a curved form to form shovel standards.

I am, therefore, of the opinion, in view of the above facts and comparisons, that the two devices, namely, Exhibit Wayne Cultivator and Avery Plow, are substantially the same devices as shown and described in complainant's reissue and model, and claimed in the two first claims thereof.

Cross-examination by JOHN E. HATCH, Esq., of counsel for defendants:

X Q. 4. What distinction do you draw between the two claims, if any, as you have compared the devices with them in your direct examination?

A. The first claim is for two diverging beams, which are rigidly fastened to each other by any suitable means, such as bolts, rivets, or welding. The second claim is for their being rigidly fastened together, and in addition thereto those parts merge into a device or particular form of attachment.

X Q. 5. What do you mean by the word "merge"? Was it welded together so as to become one piece of metal?

A. Not necessarily; it may mean that; it also may mean the two pieces brought up and formed into one compact mass without being welded.

X Q. 6. How, by rivets or bolts, did you mean?

A. I will answer that by an illustration: These two beams may be brought together at their points, held together by rivets, and the metal of the ends being brought up and formed into one device laying close together, forming one device composed of two pieces.

X Q. 7. Is there any practicable difference between the two diverging beams merged together in this way, that is, they are welded into
68 one or brought up side by side so as to form one device, but united by rivets, and the two diverging beams held rigidly by bolts, perhaps with an intermediate piece—mechanically is there any distinction between the two? If so, what is that distinction?

A. The purpose and result is substantially the same; simply difference of mechanical construction.

X Q. 8. Is this difference of mechanical construction one well known to mechanics, that has been for a long time well known as a different means for accomplishing the same purpose? Or is it, in your opinion, something new?

A. Simply bolting pieces together or welding them is not new, but the application to this device is new in my opinion.

X Q. 9. Has one of these devices any advantage over the other that you know of in this application?

A. The advantage or disadvantage would be a matter of the cost of construction, I would suppose.

X Q. 10. Is there much difference in the cost of construction, and which would be the most expensive in your opinion?

A. My opinion is that the difference lies in the system of the shop building the two forms: one shop being arranged to build one form, and another shop more particularly the other.

X Q. 11. Did I understand you to say that in your opinion the Complainant's Exhibit Wayne Cultivator contains the device claimed in the second claim of complainant's patent?

A. As far as their front ends are fastened rigidly together.

Q. 12. That is, then, if I understand you correctly, a plow or cultivator that has two diverging beams with their rear ends bent for
69 the attachment of shovel standards and the front ends fastened rigidly together by bolts would be an infringement of the second claim?

A. Yes, sir: for the purposes described.

X Q. 13. What do you understand the purposes are?

A. For the purpose of attachment to the draft.

X Q. 14. Suppose it was made with the two ends bolted together and a hole in the end to afford means of attaching it to the draft, then would the device infringe the second claim, in your opinion, or would it not?

A Those two ends through which the hole is made laying close together would merge into device for that purpose.

(Question repeated.)

A. It would.

X Q. 15. Would such a device infringe the first claim in your opinion?

A. It would.

X Q. 16. In the Complainant's Exhibit B. F. Avery & Sons Plow and Wayne Cultivator are the shovels attached to the curved standards by shoulder and slot as shown in Complainant's Exhibit Model, or are they not?

A. The Avery plow is attached by two bolts and not by shoulder and slot. The Wayne cultivator is not attached by shoulder and slot, but by a different mode of attachment.

Redirect examination by W. W. LEGGETT, Esq., of counsel for complainant:

Q. 17. Did I understand you to say that two diverging beams, if simply fastened together by a bolt at their forward ends and with a hole

made through them for attachment to the draft, and with their forward ends bent to form the shovel standards—that that device would infringe the second claim?

70 A. It would not; it would require them to be rigidly united.

Q. 18. Does the termination of the forward ends of the beams into a hitching attachment form necessarily an element of the first claim, and how is it with claim two (2)?

A. I should say it did in the first claim, and also does in the second.

ISAAC V. HOLMES.

Sworn to and subscribed before me this 9th day of May, 1876.

FRANCIS TOUMEY,
Notary Public.

Complainants here introduce in evidence certified copies from the records of the Patent Office, as follows:

All assig'ments and contracts under original letters patent No. 31357 and reissues 3514 and 6131, and marks the same Complainant's Exhibit, Assignment, etc.

Also certified copy of original letters patent to Mathew G. Slemmons, dated Oct. 9th, 1860, No. 30357, and marks the same Complainant's Exhibit Slemmon's Original Patent.

Also certified copy of reissued letters patent to M. G. Slemmons, dated June 22d, 1869, No. 3514, and marks the same Complainant's Exhibit Slemmon's First Reissue.

Also certified copy of file wrapper and contents in the matter of letters patent granted to M. G. Slemmons, dated Oct. 9th, 1860, No. 30357, and marks the same Complainant's Exhibit Original File Contents.

Also copy of file wrapper and contents in the matter of reissue letters patent to M. G. Slemmons, assignor to Leggett & Leggett, dated Nov. 10th, 1874, No. 6131, and marks the same Complainant's Exhibit File Contents, Complainant's Reissue.

71 Also, certified copy of file wrappers and contents in the matter of reissue letters patent granted to M. G. Slemmons, dated June 22d, 1869, No. 3514, and marks the same Complainant's Exhibit File Contents, Slemmons' First Reissue.

Notary's certificate.

STATE OF OHIO,
County of Cuyahoga:

I, Francis Toumey, a notary public in and for the above county and State, hereby certify that, on May 9th, 1876, at Cleveland, Ohio, Isaac V. Holmes was by me first solemnly sworn to tell the truth, the whole truth, and nothing but the truth, in the cause specified in the caption hereto; that this deposition as above appearing was by me reduced to writing and read by him, and thereafter by him subscribed before me; that said deposition was taken in the presence of counsel for the parties at the place and time above mentioned; that I am neither of counsel, attorney, or relation to any of the parties to this suit, nor otherwise interested in the event thereof:

In witness whereof I have hereunto set my hand and affixed my seal of office this 9th day of May, 1876.

[L. S.]

FRANCIS TOUMEY,
Notary Public.

72 *Notice.*

W. W. LEGGETT ET AL. vs. B. F. AVERY & CO. ET AL. } In equity.

The complainants are hereby notified that we have closed the defendants' evidence in the above entitled cause this 8th day of October, 1876.

HATCH & PARKINSON,
For Defendants.

Testimony of Washington G. Pagett.

73 *Stipulation as to testimony.*

United States circuit court, district of Kentucky. In equity.

WELLS W. LEGGETT AND LEVERETT L. LEGGETT vs. B. F. AVERY AND SONS ET AL. } 3016.

AND

United States circuit court, district of Indiana. In equity.

WELLS W. LEGGETT AND LEVERETT L. LEGGETT vs. THE WAYNE AGRICULTURAL COMPANY ET AL. } 4028.

It is stipulated in the above causes that the defendants shall have until September 15th, 1876, in which to take their testimony, unless they give notice prior to that time that their testimony is closed; and that the complainants shall have until November 15th, 1876, or sixty days after notice that defendants' testimony is closed, in which to take their testimony in rebuttal.

M. D. LEGGETT & CO.,
For Complainants.
HATCH & PARKINSON,
Solicitors for Defendants.

74 *Testimony of Washington F. Pagett.*

Circuit court of the United States for the district of Kentucky. In equity.

W. W. LEGGETT ET AL. vs. B. F. AVERY AND SONS. } 3016.

Examination of witnesses on behalf of complainants, under the 67th rule in equity, as amended, formal notice being waived. Taken at the office of Ogilvie & Hanna, Springfield, Ohio, November 13th, 1876.

Present, Wm. Behrens, representing M. D. Leggett & Co., for complainants, and Arthur Stem, of Hatch & Parkinson, for the defendants.

By request of parties it is ordered that these depositions be taken by question and answer.

WASHINGTON F. PAGETT, a witness produced on behalf of the complainants, being first duly affirmed, deposeth and saith, in answer to interrogatories propounded to him by WM. BEHRENS, Esq., representing M. D. Leggett & Co., of counsel for the complainants, as follows:

Q. 1. State your name, age, residence, and occupation.

A. My name is Washington F. Pagett; age, 68 years; residence, Springfield, Ohio; and by occupation a machinist.

75 Q. 2. Are you the same Washington F. Pagett who filed several applications for letters patent in the United States Patent Office, January 22d, 1852, and who on one of said applications obtained letters patent, dated March 30th, 1852, the other or others being withdrawn?

A. I am the same, and I presume that is the date.

Q. 3. Please state whether or not your several applications were prepared and filed at the same time.

A. They were, according to my recollections.

Q. 4. Did you ever make any double shovel iron plows? If so, describe their construction as accurately as possible.

A. I never made a plow myself. I instructed the smith. We made a central beam and a short one on each side. These short beams diverged from the central beam at a point about two feet nine inches from the frame of the central beam. The left hand beam began to diverge from the main beam about nine inches further back than the one on the right, so that the shovel on the left hand beam was nine inches in the rear of the shovel on the right hand beam.

Q. 5. Where were the handles attached?

A. The handles were attached to the end of the central back beam of the attachment of the short beams, and that part of the central beam was curved for a short distance, so that the handles could be adjusted up and down on the curved portion.

Q. 6. Did you ever make any double-shovel iron plows without a central beam for the attachment of the handles?

A. I never did.

Q. 7. Did you ever make a double-shovel iron plow in which the beams diverged from the clevis or front end of the beam?

76 A. I never did.

Q. 7. Please examine the sketch now shown you, marked Complainants' Exhibit, Pagett 1, and state which one, if any, of the three figures there shown represents the construction, so far as the beams are concerned, of the double shovel iron plow as made by you.

A. Figure 3, if I am to understand that the beams curve, represents the plow made under my direction.

Q. 8. Did you ever have the idea of dispensing with the central beam entirely?

A. I don't think I ever entertained that idea.

Q. 9. Please examine Respondents' Exhibit, Pagett Patent of 1852, and state whether it describes any other manner of attaching the handles except to one beam only?

A. I don't see that it does. It does not.

Q. 10. How far back from the clevis or point of attachment of the team was the point from which the applied beams began to diverge from the central beam in the double shovel iron plow constructed by you?

A. About two feet nine inches the right hand beam, and the left beam about nine inches further back.

Q. 11. Referring to the Respondents' Exhibit, Pagett Patent of 1852, can you at this late day tell with any certainty what you meant at that time by the following language found therein: "The main beam and sheath, and the one applied must diverge equally from the line of direction or front of the beam"?

A. I cannot.

Q. 12. Have you any recollection whether the idea of omitting the central beam had presented itself to your mind at or before the time you made application for said patent?

77 A. I have no recollection.

Q. 13. Referring again to the Exhibit, Pagett Patent of 1852, and to the language therein used describing the construction of the double-shovel plow, and referring also to the sketch, Complainants' Exhibit, Pagett 1, please state to which, if any, of the three figures shown in said sketch, the language of 1852 patent you now think may have been intended to apply.

A. If I intended to apply it to any figure, it was or must have been figure two (2).

Q. 14. Referring again to Complainants' Exhibit, Pagett 1, please state which of the figures there shown you think would correctly represent your idea of the construction of a double-shovel iron plow, if you intended the language used in your 1852 patent to describe such a plow without a central beam.

A. Figure two (2).

Q. 15. Please examine the Complainants' Exhibit, Pagett's rejected application of 1852, and state whether, as to the attachment to and divergence of the applied beams from the central beam, it correctly represents the construction of the iron bent-beam double-shovel plow that you made after your patent was granted.

A. It does.

Q. 16. What reason had you for making the applied beams commence to diverge about two feet nine inches back from the front end of the central beam?

A. The further back they commence to diverge or are attached, the less iron it takes.

Q. 17. Does not the fact that no description is found in your

78 1852 patent, in relation to the manner of attaching the handles, except as attached to one beam, together with the fact that you never constructed a double shovel iron plow without a central beam to which you attached the handles, satisfy your mind that at the time you made application for said patent the idea had not occurred to you of constructing a double shovel iron plow without a central beam?

A. I cannot say that I never had the idea; but I never intended constructing one.

Q. 18. Did you ever know of one William Wolfe, as alleged in defendants' answer, who resided at Stone Bridge, Clark County, Virginia?

A. Yes; I was acquainted with him. He made my plows.

Q. 19 Do you know whether he ever made any double-shovel iron plows different from your construction?

A. I don't think he did.

Q. 20. Did you grant a license to Hall & Speer, of Pittsburgh, Pennsylvania?

A. I certainly never did. I sold the right to Pennsylvania to two different persons in my neighborhood. In 1852 I sold to one man. I cannot recollect when I sold to the other.

Q. 21. When did you first see or hear of a double-shovel iron bent-

beam plow, in which the beams diverged from the clevis or front end of the beam?

A. I think the first I ever saw or heard of was in 1853 or 1854.

Q. 22. Where did you see them?

A. I saw the one in Alexandria, Virginia. I had several single-shovel plows in an agricultural house there, and on a visit there some man told me that a certain man had infringed on my plow, and told me where to go and see it.

79 Q. 23. Did you go to Alexandria several times after your patent was granted, and at which of these times did you see said plow?

A. I did go several times and I did not see said plow the first time.

Cross-examination by counsel for defendant:

X Q. 24. Did you ever make an iron plow with three shovels fastening the centre one to the centre beam by bending it for that purpose?

A. I never made a plow with three shovels.

X Q. 25. In your patent of 1852, what do you mean by the word sheath?

A. It is that part of the curved beam to which the shovel is attached, and embraces all or nearly all the curved portion.

X Q. 20. Then by the following words "the main beam and the sheath and the one applied, must diverge equally from the line of direction or front of the beam," you mean, do you not, that the two sheaths, or rear ends of the beams, to which the shovels are attached must diverge equally from the line of direction or the line of draft?

A. I do, when the idea is presented that we intend to make one that way, but I never intended to make one that way. I described that they begin to diverge about two feet nine inches from the front end of the beam or clevis.

X Q. 21. Is there anything in your patent that indicates at what distance from the clevis the secondary beam shall be attached to the first mentioned beam?

A. It is about two feet nine inches.

X Q. 28. Please quote from your patent—a certified copy of which is now shown you—the words which indicate that this beam or these

80 beams shall be attached to the first mentioned beam two feet nine inches from the clevis, or anything that indicates at what distance from the clevis they shall be attached?

A. I do not see that I state the distance.

X Q. 29. There is nothing then in your patent to indicate the *in*stance from the clevis at which this beam is to be attached, or where the two beams begin to diverge, is there?

A. It is not expressed in my letters patent, but I depended upon my model to show about the distance.

X Q. 30. A mechanic making plows according to your patent might have attached the secondary beam much nearer the clevis, might he not, so far as anything in the letters patent indicate?

A. I don't see that he might not, if——

X Q. 30½. What were your reasons for making the two beams begin to diverge two feet nine inches back of the clevis?

A. My idea was that when the point of the shovel stood at a proper distance from the point of the clevis, that there would be a proper lap suited to the attachment without extending further forward. I have left those particulars to be decided by the manufacturer, and one might

make it much longer than another; I mean by the lap the portion of the supplied beam that fits up to the main beam.

X Q. 31. Do I understand that you attach the supplied beam as far from the clevis as you can without destroying the practicability of the plows?

A. I would have to consider strength in the construction as well as the run of the plow in the earth; a short lap would not be substantial and too far back, it would not run well; the point of the shovel should be a proper distance from the clevis.

81 X Q. 32. You put it then as far back as you thought consistent with strength and proper operation, did you not?

A. I decided at the time just according to the idea that came to my mind. I was not particular and did not measure any plow.

X Q. 33. You say in your patent "to make a double shovel on this plan, the main beam and sheath and the one applied must diverge equally from the line of direction or front of the beam." A mechanic making a plow according to the specifications and drawings of your patent and not caring to economize iron might so arrange the beams that they would begin to diverge at any point back of the clevis, that he might choose, might he not? If not, what is there in the patent to indicate where the beams begin to diverge?

(Objected to by complainant as a mere supposition and as containing a question to which the witness has already testified.)

A. As before stated I calculated the model to decide this with any man who wanted to manufacture by the patent.

X Q. 33. Repeated.

A. There is nothing to indicate in the words quoted where the beams should diverge.

X Q. 34. Is there anything to indicate where they—the beams—must begin to diverge in any other part of the specification or drawings?

A. I do not see that I have written anything about the proper or any given distance where the beams begin to diverge.

82 X Q. 35. A mechanic making a plow according to the specifications and drawing of your patent might use his own discretion then in deciding the proper point at which the beams should begin to diverge, might he not?

(Objected to by complainant, as the witness has not qualified to determine the legal scope of his patent.)

A. He might at the peril of infringement.

X Q. 36. If a mechanic were guided simply by the specifications and drawings of your patent, in making a plow he might use his own discretion as to the point at which the beams should begin to diverge, might he not?

A. He might, and yet if he varied from the proportions of my model, his plow might not be effectual; he might get them too far back or too far forward and not have a right space for the handles.

X Q. 37. When and where did you first see the sketch marked "Complainants' Exhibit, Pagett 1"?

A. I first saw it in Springfield, I believe, on yesterday.

X Q. 38. Who drew it?

A. I did not see it drawn. Mr. Behrens showed it to me.

X Q. 39. In your direct examination, you say you think Figure 2 in this exhibit would correctly represent your idea of the construction of a double shovel iron plow if you intended the language used in your 1852 patent to describe such a plow without a central beam. What is there

in the language of that patent to indicate that Figure 2 represents your idea any more than Figure 1?

A. My patent sets forth the idea of attaching the applied beam at about two feet nine inches from the clevis. The fact that they diverge from the line of draft equally, and that the applied one is shorter than the one with beam and sheath combined.

83 X Q. 40. What is there in your specification and drawing that sets forth the idea of attaching the applied beam at about 2 feet 9 inches from the clevis?

A. In the specification I describe a mode of making a cultivator, by the application of two short pieces on either side of the main beam to receive shovels, which with the shovel on the main beam makes a three-tooth cultivator. To construct a double shovel on this plan the idea is to apply a beam of the same length alluded to on the right side of the main beam and sheath; the applied beam is to be shorter than the main beam.

X Q. 41. My question is not what the idea may be, but what there is in the specification or drawing of your patent to indicate that the point at which the two beams begin to diverge is two feet nine inches from the clevis, rather than 1 foot 9 inches, or 1 foot, or any distance that the mechanic might think most desirable.

A. There is nothing that literally declares it. The fact stated that applied beams may be shorter in the three-tooth plow decides that the one supplied to the main beam in the double shovel may be about the same length of these in the three shovel.

X Q. 42. You say that the supplied beams may be shorter. Is there anything to indicate how much shorter; might they not be in perfect accord with your patent and be one foot shorter, or only six inches shorter than the main beam?

A. I don't see that it would conflict with the wording of the patent, but it would increase the cost of metal in manufacture, in making them longer than barely necessary.

Adjourned until to-morrow morning, November 14th, 1876, at 8 o'clock a. m.

84 NOVEMBER 14TH— 8 o'clock a. m.

X Q. 43. Is there any provision in your patent for supplying handles to a double shovel plow?

A. I believe not; literally, there is none.

X Q. 44. The mechanic desiring to make a double shovel plow according to your patent must devise a means of his own for attaching the handles, must he not?

A. He must, or be guided as I was in cutting off a portion of the central beam and attaching the handles to the projection of the central beam in the three-tooth plow; there is no plan given where the plow is constructed with the two beams.

X Q. 45. In your answer to the question, "what were your reasons for making the two beams begin to diverge 2 feet 9 inches back of the clevis?" you say, "I have left those particulars to be decided by the manufacturer"; and you have stated that "it would not conflict with the wording of your patent if the beam should begin to diverge six inches or 1 foot back of the clevis." Then Respondents' Exhibit, Pagett 2, represents the beams of a plow made according to the drawings and specifications of your patent, does it not?

A. I think not, because in my two-beam proposition the right hand supply beam, the front of it, is so far from the clevis that my patented

handles may be placed upon the main beam, and as far back from the clevis as possible, and this cannot be with this figure.

X Q. 46. Have you not said that in your double shovel plow that you have made no provision for the attachment of the handles, but that the mechanic making the plow according to your patent must devise
85 a means of his own for attaching the handles, or attach them to the projection of the central beam in the three-tooth plow?

A. I have said this, but I will add, that he has the advantage if he chooses of applying my patented handles to the main beam in front of the end of the supply beam, hence it must be shorter than the main beam, and as short as practicable.

X Q. 47. A mechanic making a double shovel plow according to the specifications and drawings of your patent, and being left to devise his own means for attaching the handles as you say he would be, and finding nothing in your patent to indicate the point at which the beam shall begin to diverge, might arrange the beams as shown in either of the three figures shown in Respondents' Exhibit, Pagett Patent 2, might he not?

(Questions objected to by complainant as a mere supposition and as irrelevant.)

A. He certainly could not, if he had in view the necessity of providing for the handles and economizing iron and labor.

X Q. 48. Could not the handles be attached to either of the plow beams shown in this exhibit, by attaching the clip or loop described in your patent, to each of the beams or sheaths, thus connecting a single handle to each beam, these handles being connected by a brace similar to the brace D shown in your drawing Pagett Patent of 1852, or in some other equally practical manner?

A. It could be connected with figures 1 and 2 with the additional expense of the extra loop and take the risk of the change that might be a disadvantage. I don't how many others they might get up; different men might make it in different ways.

86 X Q. 49. A skilled mechanic, making a double shovel plow, according to the specifications and drawings of your patent in which you say, there is nothing to indicate the point at which the beams shall diverge; and devising this or some other means for attaching the handles, if he choose to incur the additional cost in iron and labor, might arrange the beams like those shown in either of the three figures shown in Respondents' Exhibit, Pagett 2, might he not?

(Question objected to by complainants' counsel, as a mere repetition of former questions, and an attempt to confuse witness.)

A. A skilled mechanic manufacturing a plow would be apt to settle down on my own ideas of constructing a plow, and he might make improvements. A skilled mechanic looking at my patent might see some objections and make some changes. I admit the other fact; I mean by the other fact that he might make improvements.

X Q. 49. Repeated.

A. A mechanic might happen to think of these and choose either of figure 1 or 2. I don't think I thought of either, or would have chosen either.

X Q. 50. You admit then, do you, that so far as the specifications and drawings of your patent describe the plow, they will apply to either of these shown in respondents' exhibit?

A. They apply to figure 3, but they do not apply to figures 1 and 2 in my opinion, and I don't think it would lead a man to adopt either of these figures.

X Q. 51. In the specifications of your patent you say, "To make a double shovel on this plan the main beam and sheath and the one
87 applied must diverge equally from the line of direction or front of the beam." In figures 1 and 2 of Respondents' Exhibit, Pagett 2, the main or left hand beam and the right or applied beam diverge equally from the line of direction or the front of the beam, do they not?

A. They do, with this qualification, that the front of the beam is a second signification of the line of direction, and it means all that part of the beam forward of the right hand or supplied beam. By line of direction, I mean line of draft.

X Q. 52. The two beams as shown in figures 1 and 2 in said exhibit diverge equally from the line of direction or line of draft, do they not?

A. They do.

X Q. 53. They are then exactly in accordance with the description given in your patent, are they not?

A. I cannot conceive that they are in exact accordance.

X Q. 54. Your patent in describing the beams of a double shovel plow says this and nothing more, "the main beam and the one applied must diverge equally from the line of direction or front of the beam." By line of direction you say you mean the line of draft. You also say that the beams shown in figures 1 and 2 referred to, diverge equally from the line of direction or line of draft. How then can you say that you cannot conceive that they are in exact accordance with the description in your patent?

A. First, I say that the patent does say more; it says that the right hand beam is shorter than the main beam, in the description of the three shovel plow; further, all the constructions describe that it must be as much shorter as will admit of the proper lap and as far back from the clevis as is proper to bring the shovels at the proper distance.

88 X Q. 55. The right hand beam, as shown in figures 1 and 2, is shorter than the left hand, is it not?

A. I can see the one in figure 1 is shorter, and the one in figure 2 I cannot perceive is any shorter; if the drawing in figure 2 shows a clevis, figure 2 does seem shorter.

X Q. 56. Quote from the patent anything that shows how much shorter the right hand beam must be than the left hand beam.

A. I omitted to state in my patent or specification the distance, but I depended upon my model to govern the manufacturer.

X Q. 57. There is nothing then in your patent to show how much shorter one beam must be than the other, or where they begin to diverge?

A. There is nothing to show literally.

X Q. 58. If, then, the right hand beams, shown in figures 1 and 2 of the Pagett Exhibit 2, are shorter than the left hand beams, and the two beams in each figure diverge equally from the line of draft or direction, said figures correspond to the description contained in your patent, do they not?

(Question objected to by counsel for complainants for the reason that the witness has already answered similar questions several times, and has answered them to the best of his ability.)

A. By a direct answer I would obliterate a term that I apply to my left hand beam. I term it the main beam, and in figures 1 and 2 of Pagett 2, the right hand beams approach so nearly to the length of the left that the term main cannot be fairly applied.

89 X Q. 59. By main beam, as used in your patent, I understand

you to mean the beam to which the clevis or draft is attached. Is this correct?

A. It is correct, and when they are so nearly equal in length it is of no consequence to which the clevis is attached or which might stand forward of the other.

X Q. 60. In figures 1 and 2 of Pagett Exhibit 2, the main or left hand beam is the one to which the clevis is attached; the right hand beam is shorter than the main beam and bolted to it; the two beams diverge equally from the line of draft or line of direction, and therefore correspond with the description contained in your patent, do they not?

(Question objected to by counsel for complainants for the reason that the witness has already fully answered on this point.)

A. In that particular, the mere point of attachment, they do correspond, the direct simple thing of attaching the one to the other, but if I had meant to elongate the right hand beam without regard to economy of iron, I should have made it even in front with the left hand beam, and embraced both with the clevis, which would have made it more exact with relation to the draft line.

X Q. 61. Figures 1 and 2 of respondents' Exhibit Pagett 2 correspond in their beams to the description of the double shovel contained in your patent; that is, a blacksmith making a plow and guided by your specifications and drawing alone might make the beams like those shown in either of the three figures as his judgment or fancy should decide, leaving out of consideration economy of iron, and attaching the handles as suggested in cross-question 46, might he not?

90 A. My specifications are not clear exactly, and that blacksmith, like myself, should be instructed by the description of the three-shovel proposition, and would, therefore, not likely make it upon either the plan of figure 1 or two.

X Q. 62. The question was not what he would be likely to do, but what he might do. I repeat the question.

(Question objected to by counsel for complainants as immaterial.)

A. I have no idea what another man's fancy might incline him to do; he might make it that way or some other way.

(Counsel for defendant here offers in evidence sketches, and marks the same Respondents' Exhibit Pagett 2 and Respondents' Exhibit Pagett 3.

X Q. 63. I now show you Respondents' Exhibit 2, in which figure 1 represents the beams of an iron double shovel, in which A A represents the main beam to which the clevice D is attached, B the applied or shorter beam, and C the point of attachment, and ask you if the same has not a shorter beam attached to the main beam, the two beams diverging equally from the line of direction or line of draft, and if it corresponds with the description of the double shovel contained in your patent?

A. I cannot see that it corresponds with the description when that description is made out and completed with reference to the three-shovel proposition.

X Q. 64. Why not?

A. Because in the three-shovel proposition the right hand beam is notably shorter than the main beam. If it might have been elongated to any indefinite length, any good mechanic would have made it even in front with the main beam. It might have been indefinitely elon-

91 gated without reference to economy or design of the other parts in completing the implements.

X. Q. 65. What is there in your patent to indicate, either in the

description of the three-shovel or two-shovel plow, the length of the applied beams? Quote from the patent.

A. I have admitted that the specifications are not clear. I did not give lengths or sizes, but it is obvious there was a reason on the score of economy, or otherwise, for having the right-hand beam shorter than the main beam, else the beam would have extended out even with the middle beam, and in no case would it have stopped short of that point.

X Q. 66. Is not the applied beam in Exhibit Pagett 3 shorter than the main beam?

A. Yes, it is shorter.

X Q. 67. Now, leaving out of consideration the question of economy of iron, and also any plow that you have made, or any notion that you may have, and confining your attention strictly to the description in the patent, does this description literally correspond with said exhibit?

A. I cannot say that it does. The description is imperfect; it is not a full description.

X Q. 68. I asked you to confine yourself literally to the description contained in the patent, in which you say that the two beams must diverge equally from the line of draft or direction. The description and exhibit correspond in that respect, do they not?

(Question objected to, for the reason that the witness has answered this question just now, and has confined himself to the description contained in the patent, stating that said description is imperfect, and is not a full description.)

A. Yes, they do correspond in that particular.

92 X Q. 69. You have stated that, according to your patent, the applied beam should be shorter than the main beam. Said exhibit corresponds to the description in your patent in that particular, does it not?

A. It is shorter, but not notably shorter.

X Q. repeated.

A. Yes, literally; if it had been but half an inch shorter it would correspond in that particular, but no mechanic would make it so near even in front and not entirely so.

X Q. 70. Does your patent give any fuller description of a double-shovel plow than that the two beams shall diverge equally from the line of direction and, according to your interpretation, that the applied beam shall be shorter than the main beam? If so, quote that further description.

A. I quote this. It says: "To make a double shovel on this plan the right hand beam must be similar in shape, but shorter."

X Q. 70 repeated.

A. Yes, they shall be of same shape from point of attachment back. This is supplied in the description of the three-shovel plows.

X Q. 71. Are or are not the two beams shown in said exhibit of the same shape back of the point of attachment?

A. Yes, those in the exhibit seem to be.

X Q. 72. You have testified, then, that the description of the double-shovel contained in your patent requires the two beams to diverge equally from the line of direction; the applied beam, according to your interpretation, shall be shorter than the main beam, and that the two beams shall be alike back of the point of attachment; that further than that the description is incomplete. Is this correct?

93 A. It is. In that particular my interpretation has been accepted in a certain degree, and I will interpret further sufficiently to show a manufacturer where the two beams should be attached for

economy in metal and proper proportion in view of the attachment of other parts not described. The supplied beam need only be long enough to have a proper lap forward of the curve in the main beam. Should the point of that supplied beam extend further to the front, it might be in the way of some attachment of handles.

(All that portion of the answer after "it is" objected to as incompetent, irrelevant, and not in reply.)

X Q. 73. You have testified, then, that the Exhibit Pagett 3 corresponds with the description in the patent in these three particulars, namely: divergence of the beams; the shape of the beams; and that the applied beam is shorter than the main beam; also that further than this the description is incomplete; then so far as the description in your patent is complete, it corresponds with Exhibit Pagett 3, does it not?

A. It does in these three particulars.

X Q. 74. In your direct examination you say that the further back the beams commence to diverge or are attached, the less iron it takes. If a mechanic had not wished to save iron, and desired to bring the point of draft as far forward as possible, he might have made the two beams diverging from the clevis, might he not? By point of draft I mean that point at which the resistance of each shovel of the plow becomes united in the line of draft.

(Question objected to as immaterial.)

A. Yes, he might in that particular.

Redirect examination by counsel for complainant:

94 Q. 75. Do you mean that the sheaths diverge, or that the beams diverge from the central beam?

(Objected to as incompetent, the patent expressing his meaning clearly.)

A. The angle that produces the divergence is made in the beam near where the curve commences.

Q. 76. Please examine Complainant's Exhibit Pagett rejected application of 1852, and state whether it shows at about what distance from the clevis the applied beams are attached?

(Question objected to as incompetent in interpreting the patent.)

A. Yes, it does show it in the drawing.

Q. 77. What would you say that distance was, judging from the proportion the drawing bears to the full sized plow or cultivator?

A. I suppose it is about two feet to the point of the left hand applied beam?

Q. 78. Then does or does not the drawing of your rejected application which was filed in the patent office on the same day that the application on which your 1852 patent issued illustrate the construction of the iron bent beam double-shovel plow alluded to in your said patent, so far as the divergence of the beams and the distance from the clevis where the divergence commences is concerned?

(Objected to as incompetent.)

A. It is an illustration.

Q. 79. So far as the divergence of the beam is concerned, the drawing of your rejected application illustrates the construction of plow referred to you in your 1852 patent, does it not?

95 A. It does.

Q. 80. Does or does not, so far as the distance from the clevis to the point where the beams commence to diverge is concerned, said

drawing illustrates the construction of plow referred to in your said patent?

A. It does in the main.

(Complainants' counsel here offers in evidence the sketch heretofore referred to, marked Complainants' Exhibit Pagett 1.)

Q. 81. In your opinion, does or does not your 1852 patent describe such a construction of a double shovel bent beam iron plow as is shown in figure 1 of Complainants' Exhibit Pagett 1?

A. It does not.

Q. 82. Do you consider yourself the inventor of a double shovel bent beam iron plow, wherein the beams are fastened together at and diverge from the clevis?

(Objected to as incompetent and not in redirect examination.)

A. I am not.

Q. 83. Why do you think you are not?

A. Because I have no recollection that the idea ever came to my mind.

Q. 84. Can you see at this day any advantage or disadvantage of such a construction referred to in the preceding question over the construction adopted by you?

(Objected to as incompetent and irrelevant.)

A. Yes, it possesses decided advantages over mine, at least one decided advantage.

Q. 85. Please state what that advantage is.

(Objected to as incompetent.)

96 A. One advantage is that if one of the shovels should meet with a rigid obstruction, the strain would be direct from the point of that shovel to the clevis, and the beam being straight, there would be no tendency to bend that beam right or left; whereas in my construction the strain would fall upon the angles, producing the divergence, and metal is generally more or less weakened by an angle or bend, the tendency would be to straighten out the left-hand beam and increase the angle in the right-hand beam.

Q. 86. In view of the drawing of your rejected application, do you believe that figure of Respondents' Exhibit Pagett 3 correctly illustrates the construction of double-shovel plow referred to in your patent?

(Objected to as incompetent, witness having already fully testified upon this point fully.)

A. I do not believe it does. In some disconnected particulars it may, perhaps.

Q. 87. In your testimony in cross-examination you stated several times that in your 1852 patent it was stated that the applied beam commenced to diverge 2 feet 9 inches from the clevis. Was not the fact that your rejected application showed about such a construction and stated that one beam should be applied about nine inches to the rear of the other the reason why you make that statement, confounding the specification of the rejected application with that of the patent?

(Objected to as leading.)

A. It may have decided me in saying, if I did say, that the distance should be 2 feet 9 inches. I thought I had it written down somewhere, but I now remember that I had stated that as the probable distance in the rejected drawing.

Recross-examination:

97 X Q. 88. In your statements in your direct and redirect, when you described your plow as having the beams beginning to di-

verge 2 feet and 9 inches from the clevis, did you not have in mind the plows made by you?

A. I don't know that I had those plows in mind, but I was endeavoring to state as nearly as I could about the distance it should be.

X Q. 89. That was about the distance at which the beams began to diverge in the plow made by you, was it not?

A. I rather think it was the distance from the clevis to the front end of the applied beam.

X Q. 90. Is it not probable that in thinking of your patent you associate in your mind with the plows you formerly made?

A. I stated, no doubt, frequently to different individuals about the length, and that I might have to vary these distances, and might have been one-half inch more or less.

X Q. 91. In your redirect you say that figure 1 of Pagett Exhibit 3 may in some disconnected particulars correctly illustrate the construction of the double-shovel plow referred to in your patent; to what particulars do you refer?

A. The fact that the right-hand beam is to be shorter than the main or left-hand beam; 2nd, they diverge equally from the line of draft, and they are shaped alike in the sheath or curve.

X Q. 92. In these respects figure 1 of Pagett Exhibit 1 also illustrates the construction of double-shovel plow referred to in your patent, does it not?

A. No, it does not illustrate it in my opinion.

X Q. 93. Why not?

98 A. It presents a plow or shape I never had in my mind in studying out my other.

X Q. 94. In these respects figures 1 and 2 of Respondents' Exhibit Pagett 2 illustrate the construction of the double-shovel plow referred to in your patent, does it not?

A. In these respects they correspond with the language of the patent in relation to the double-shovel plow, which I admit is incomplete. These respects is what was before called disconnected particulars.

X Q. 95. These figures, then, figures 1 and 2 of Pagett Exhibit 2, and figure 1 of Pagett Exhibit 3, correspond with the language of the patent, so far as the language describes a double-shovel, do they not?

A. As I have already said, they do in some particulars.

X Q. 96. Do they not in all particulars named or described by the language of the patent?

A. In all these particulars I have said they do correspond. I have been made to say that figure 2 corresponds, in the fact that the right-hand beam is a very slight fraction shorter than the left-hand beam, which I must regard as a subterfuge, because there is no mechanical reason why that beam should not have been even in front with the main or left-hand beam. In figure 1 the right-hand beam is also shorter, but not so much shorter as to recommend the arrangement.

X. Q. 97. What do you mean by "subterfuge"?

A. I mean I cannot see any design in the little fraction shorter of the right-hand beam other than to perplex me.

WASHINGTON F. PAGETT.

99 *Notary's certificate.*

I, James J. Hanna, a notary public of the State of Ohio, in and for the county of Clarke, do hereby certify that the above-named Washington F. Pagett was by me first duly affirmed to testify the truth, the

whole truth, and nothing but the truth. That the foregoing deposition, by him subscribed, was reduced to writing by me and written, and by said witness subscribed in my presence, and was taken in the manner and at the time set forth in the annexed notice, page 1. I further certify that I am not of counsel for either of the parties to this suit, nor am I in any way interested in the result of the same.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 14th day of November, A. D. 1876.

JAMES J. HANNA,
Notary Public, Clarke County, Ohio.

100 *Testimony of John Osborn.*

Circuit court of the United States for the district of Kentucky. In equity.

W. W. LEGGETT ET AL.
vs. } 3016.
B. F. AVERY ET AL.

Examination of witnesses on behalf of the complainant' under the 67th rule in equity, as amended, formal notice being waived.

Present, Wm. Behrens, representing M. D. Leggett & Co., for complainants, and Arthur Stem, for Hatch & Parkinson, for respondents.

By request of parties, it is ordered that these depositions be taken by question and answer.

JOHN OSBORN, a witness produced on behalf of the complainants, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by WM. BEHRENS, of counsel for complainants, as follows:

Q. 1. What is your name, age, occupation, and residence?

A. Name is John Osborn; age, 61; and residence, Archer Township, Harrison County, Ohio; and am by occupation a farmer.

101 Q. 2. How long have you resided in the vicinity of Cadiz?

A. About fifty-nine years.

Q. 3. About how near to Cadiz have you lived during that time?

A. Not over four miles.

Q. 4. Please state, if you remember, when you first saw an iron-beam double-shovel plow.

A. I cannot tell exactly. I think it was before 1856 and after 1849.

Q. 5. Did you ever hear who was the inventor of the iron-beam double-shovel plow? If so, please state who.

A. The first plow I ever remember of seeing of that kind was in Mathew G. Slemmons' shop, and it was claimed by people generally that he was the inventor. That was always my understanding from every source.

Q. 6. Did you ever hear any other person's name as mentioned being the inventor of said plow?

A. Not that I recollect of.

(Signed) JOHN OSBORN.

Cross-examination waived.

Testimony of William Boggs.

Also WILLIAM BOGGS, of lawful age, being by me first duly sworn, as hereinafter certified, deposes as follows:

Q. 1. State your name, age, residence, and occupation.

A. My name is William Boggs; am 73 years of age; reside in Cadiz, Ohio; and am by occupation a farmer.

Q. 2. How long have you resided in Cadiz?

A. Thirty-one years next spring.

102 Q. 3. Please state, if you remember, when you first saw an iron-beam double-shovel plow.

A. It is impossible to state definitely. It was between 1850 and 1860—some time after 1850, and, I think, previous to 1855.

Q. 4. Did you ever hear who was the inventor of the iron-beam double-shovel plow? If so, please state who.

A. My understanding at the time was that it was Mathew G. Slemmons.

Q. 5. Did you ever hear any other person's name mentioned as being the inventor of said plow?

A. I have not to my knowledge.

(Signed) WM. BOGGS.

Cross-examination waived.

103 *Testimony of John P. Cramblit.*

Circuit court of the United States for the district of Kentucky. In equity.

W. W. LEGGETT ET AL. *vs.* B. F. AVERY ET AL. } 3016.

Examination of witnesses on behalf of the complainants under the 67th rule of equity, as amended, formal notice being waived.

Present, Wm. Behrens, representing M. D. Leggett & Co., for complainants, and Arthur Stem, for Hatch & Parkinson, for respondents.

By request of parties, it is ordered that these depositions be taken by question and answer.

JOHN P. CRAMBLIT, a witness produced on behalf of the complainants, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by WM. BEHRENS, of counsel for complainants, as follows:

Q. 1. State your name, age, occupation, and residence.

A. John P. Cramblit; residence, New Athens, Ohio; age, 39 years; occupation, blacksmith.

Q. 2. When did you move to New Athens?

A. April 1st, 1854.

Q. 3. In what kind of trade or business did you engage there?

104 A. Blacksmithing; as apprentice with Daniel Garvin.

Q. 4. Was Mr. Garvin making any iron beam double-shovel plows when you entered his employ?

A. No, sir.

Q. 5. When did he make the first double-shovel plow, so far as you know?

A. As near as I can come at it, it was about six years after that.

Q. 6. Did you ever hear him say that he had seen such plows before he made them?

A. Yes, sir; he had seen them in Cadiz sometime before he bought the right. He had seen them sometime before they were making them in Cadiz.

Q. 7. Did you ever hear him say anything about Mr. Alexander Wilson, the blacksmith, as having made double-shovel iron-beam plows?

A. No, sir.

Q. 8. Do you know how long Mr. Garvin lived here before you came to this place?

A. My idea is that he had lived here about ten years.

Q. 9. Did you or not ever see an iron beam double-shovel plow that was said to be of Alexander Wilson's make?

A. No, sir.

Q. 10. Did you ever hear anybody say anything about Mr. Wilson's workmanship?

A. I don't know whether I have, any one in particular, or not. The general impression I have gathered from people is that he was a great worker, but not much of a mechanic.

Cross-examination:

105 X Q. 11. How long before Mr. Garvin began making double-shovel iron plows here had you or he seen them in Cadiz?

A. A couple of years, perhaps, I would say now, *q*uessing at it.

X Q. 12. Was Mr. Wilson, from what you know of him, a man that would be likely to take up with a new thing, or to experiment himself upon new things?

A. I havn't the least knowledge of the man; he was gone when I first came here.

(Signed) J. P. CRAMBLIT.

Stipulation.

It is hereby stipulated and agreed by and between counsel of the above-entitled cause, that had THOMAS DAWSON been called and examined he would have testified to the following effect:

That he was acquainted with Mr. Alexander Wilson referred to in the deposition of John P. Cramblit.

That he believes said Wilson moved away from New Athens in the spring of 1852.

That his shop was located near Mr. Wilson's shop.

That he does not believe he ever saw Mr. Wilson engaged in working on iron-beam double-shovel plows; he may have, but if he did he does not recollect it.

That he saw Mr. Wilson principally engaged in ironing buggies.

That he saw him ironing buggies in the spring of 1852.

That he was often in his shop.

That Mr. Wilson was a poor workman.

106 That he was acquainted with Mr. Daniel Garvin, and saw iron beam double-shovel plows at his shop, but does not recollect when he saw them first.

It is also further stipulated and agreed that had ABRAHAM BUSBY, of Fairview, Harrison County, Ohio, been called and examined, he would have testified to the following effect:

That he was married in November, 1853

That he lived on his father's farm before he was married.

That he bought an iron beam double-shovel of Lewis Ryan, and does not believe that he bought it before he was married, but is not positively certain.

That he does not recollect of ever seeing an iron beam double-shovel plow on his father's farm.

That his father, previous to the marriage referred to, lived near Cadiz and near Lewis Ryan.

That it is probable that the Abraham Busby referred to in Lewis Ryan's testimony heretofore taken in this cause was his father.

ARTHUR STEM,
For Hatch & Parkinson.
WM. BEHRENS,
For M. D. Leggett & Co.

NEW ATHENS, O., *Nov.* 18, 1876.

107 *Testimony of Mathew G. Slemmons.*

United States circuit court, district of Kentucky. In equity.

W. W. LEGGETT ET AL.
vs. } 3016.
B. F. AVERY ET AL.

Testimony taken in behalf of complainants in the above-entitled cause at Cleveland, Ohio, formal notice being waived, at the office of M. D. Leggett & Co., November 29th, 1876. Before Francis Toumey, notary public.

Present, M. D. Leggett & Co., for complainants, Robert H. Parkinson, of Hatch & Parkinson, for defendants.

MATHEW G. SLEMMONS, a witness called on behalf of complainants, being duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by L. L. Leggett, esq., of counsel for complainants:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Mathew G. Slemmons; age, 58 years; residence, Johnstown, Iowa; and farmer by occupation.

Q. 2. Are you the Mathew G. Slemmons whose name appears as the inventor of the plow at issue in this case?

A. Yes, sir; I think I am.

Q. 3. Where did you live at the time you made this invention?

A. In Cadiz, Harrison County, Ohio.

108 Q. 4. Are you acquainted with one Elijah Laizure, in Cadiz?

A. Yes, sir.

Q. 5. Please state what, if any, part Mr. Laizure had in the invention of the plow in question.

A. Did not have any part that I know of.

Q. 6. What, if any, consultations or conversations were had between you and Mr. Laizure relative to this plow prior to your application for a patent upon the same?

A. Don't recollect of ever having a conversation with him at that time.

Q. 7. What, if any, knowledge do you know of Mr. Laizure's having of your operation with this plow when you invented it, and while you were constructing your model for your application?

A. I don't know what. I was working right in the shop there; I don't know but what he might have seen it when he was there at the shop.

Q. 8. What, if any, suggestions did Mr. Laizure ever make to you relative to this plow before and during the time you were constructing your model?

A. Never made any that I recollect of.

Q. 9. If you remember, please state what led you to the conception of this plow?

A. Well, some of the circumstances were: I was engaged in making wooden beam double-shovel plows, and had a man working in the wood shop named Foreman. He and I were getting up some of these wooden beam plows, and selling them kind of in partnership. I done most of the selling, and paid him (Foreman) for the wood work. We worked along together in that way about two years; he had bad timber—
109 put bad timber in the plows, and some how or other a good many of them got broke; the beams would not stand. I warranted all I sold, and was obliged to make them good, and Foreman would not make his part good, and I went to studying how to make iron beams to take the place of the wooden ones. That was about the commencement.

Q. 10. And it was this that led you to make the invention of this plow?

A. That was one of the things; yes, sir.

Q. 11. Were you assisted by the suggestions of any other party?

A. No, sir.

Q. 12. At the time you made your application for this plow were you aware that any one other than yourself held any claim to it as an invention?

A. I think I heard it said that Laizure said that he would oppose it. I don't know whether I had made application or not then, but it must have been about that time; never heard him say so; I heard he claimed to have been the inventor.

Q. 13. What were his reasons?

A. I don't know.

Q. 14. Up to the time you made your application, what, if any, protest or remonstrance had been made by any party against your sole and undivided right to the invention?

A. I don't know. I did hear that Mr. Laizure made some opposition by writing to the Patent Office; somebody told me it was made; I don't know that it was made.

Q. 15. You are shown Respondent's Exhibit A, which is a copy of a contract between you and Mr. Laizure, dated July 14th, 1855. Please state why you made that contract, and the circumstances under which it was made.

110 A. I made it because he was opposing my getting a patent in the Patent Office. I did not want to have trouble with him. I wanted to get some share of the expense I had been at. I did not know whether I would get anything or not.

Q. 16. At the time you made this contract what, if anything, was said concerning Laizure's rights as inventor in the premises?

A. John A. Bingham, who made the specifications and applied for a patent for me, and I were standing on the corner of the street one day. Laizure came along. I said to him, Laizure, I understand you are opposed to my getting a patent in this matter? Yes, he said, he was; and I asked him what he was doing it for. Why, he said, he invented

it. I told him he was mistaken. He told me how he made it. I said, Laizure, you never told me about it in your life. Says he, I think I did. No, I said, you never did. Well, he said, I invented it anyhow. Now, I says, how would you like to run the risk of paying half the expense and get an interest in it? He said he would do it. He asked me what expense I had been to. He pulled out the money and gave it to me, and I told John Bingham to make out papers. That was all that Laizure and I ever talked about the matter up to that time.

Q. 17. When you made your application for this patent in controversy did you understand the law relative to the effect of two years' public use of the device prior to the application?

A. Yes, I understood it.

Q. 18. Did you or did you not believe, at the time you made this application, that you were safe so far as concerns the law on this point?

111 A. Yes, I think I did. I was inside the law as I understood it.

Q. 19. While you were making your model and when you made your application, what, if any, efforts did you make to conceal your operations from any one?

A. I did not make any.

Q. 20. What is your recollection concerning Stewart McCoy relative to his peddling plows for you?

A. I think that I recollect Stewart McCoy's peddling some plows for Laizure. It seems to me it was wooden plows, before we made the iron-beam plows. I do not know, he might have peddled some iron-beam plows, I would not be sure. I know he peddled wooden-beam plows for Laizure. I met him down here in the Tuscarawas Valley once or twice, and whether a year or two afterwards he peddled iron-beam plows for me or not I don't know, or for Laizure either.

Q. 21. If he ever peddled any iron-beam double-shovel plows, as described in this patent, when was it?

(Objected to as incompetent.)

A. I don't remember.

Q. 22. Could it have been prior to 1853?

(Same objection.)

A. No; I think not. I did not make my plows at that time, I did not make any prior to 1853. I may possibly have, but I am not certain, I don't think I did.

Q. 23. If any of those plows were made by you prior to 1863, were they sold prior to that year?

(Objected to as immaterial.)

A. I think not.

112 Q. 24. After the contract, Respondent's Exhibit A, was made, what, if any, claims did Laizure ever make to you that you were not the sole inventor of the plow?

A. He never said anything to me.

Q. 25. What, if anything, do you recollect of the sale of a wooden double-shovel plow to one John Holland; and, if you recollect anything of such transaction, when was it made?

A. I see from my memoranda book that I sold John Holland a plow. I think it was the 26th day of June, 1852, and I recollect that he brought it back broken.

Q. 26. What kind of a plow was it?

A. One of those wooden beam double-shovel plows that Foreman and I were making.

Q. 27. When was it brought back for repairs, and what repairs were needed?

A. It seems to me it was the next fall and winter. He got it in June, and I think it was broken pretty soon, when he fetched it back that winter, and it wanted a new beam. The beam was broken off, one of them I think.

Q. 28. What led you to think that it was in the fall or winter when this plow was brought to your shop for repair?

A. Well, my recollection is, we were sitting near the heating stove in the blacksmith shop, and we did not keep this stove there in warm weather.

Q. 29. What, if anything, had this plow and its repairs to do with this invention here in controversy?

A. It was one of the plows broke that I spoke of before. I had to repair them. It was pretty expensive to be repairing wooden-beam plows all the time, and I thought I would try to get up a better one that would not break so easy.

113 Q. 30. Prior to the repairing of this plow had you ever conceived or thought of your iron beam double-shovel plow?

A. I had been thinking about making plows, but I don't know whether I had the idea clear in my mind at that time or not.

Q. 31. Are you certain that up to this time you had never constructed a model of your iron plow, or had never made a full size iron plow?

A. I think not.

Q. 32. What memoranda did you consult to refresh your memory so as to enable you to testify that this Holland plow was sold on or about June, 1852?

A. A memoranda book I kept.

Q. 33. At what place were you living when you made this memoranda?

A. I was living at Cadiz, Ohio.

Q. 34. Where is your memoranda at the present time?

A. At my home in Iowa.

Q. 35. When did you last examine this memoranda?

A. Saturday last.

Q. 36. If, as you stated, this wooden plow was sold to Holland in June, 1852, and was brought to your shop for repairs in the fall or winter, and your repairing of this plow led you to think upon a more durable improvement, and you had not yet constructed your model or made a full-size plow like that shown in the patent here in controversy, what does this lead you to believe respecting the time when you first made and sold a full size plow like the one described in said patent?

(Objected to as incompetent.)

114 A. It led me to believe that I did not make any plows before that—any iron-beam plows—and I commenced to make them after that plow was brought back for repairs.

Cross-examination by R. H. PARKINSON, Esq., of Hatch & Parkinson, counsel for defendants:

X Q. 37. You examined the entry in reference to the sale to Holland for the express purpose of coming here to testify, did you?

A. Yes, sir.

X Q. 38. And you came from your home in Iowa to this place for the purpose of testifying about these dates, did you?

A. We came this way to make a visit to Cadiz, Ohio, and by request we came this way.

X Q. 39. Why did you not bring with you the book containing this entry?

A. It would be some inconvenience for me to carry it. I did not know it was material.

X Q. 40. How much of a book was it?

A. It was not a large book, about the size of that book (pointing to a book about six inches each way, and less than a half inch thick).

X Q. 41. Can you give the exact language of the entry?

A. I think I can, very nearly. John Holland, debtor to one wooden-double-shovel plow ($4) four dollars, dated, I think, the 20th or 26th day of June, 1852.

X Q. 42. You are sure that the word "wooden" was used in the entry, are you?

A. Yes, sir; never sold any iron-beam plows for that price anyhow—$4.

X Q. 43. Is this the only plow that you ever sold John Holland?

115 A. I think so. I do not recollect of ever selling him any other plow. I did not see any charge of any to him.

X Q. 44. You are not positive about that?

A. My books were not all brought from Ohio. I have no recollection of selling him any other plow. He was not a regular customer at the shop; that was the reason why it was put into my memoranda book.

X Q. 45. Have you none of your books or memoranda with you now?

A. No, sir.

X Q. 46. You have nothing except your memoranda to fix the length of time after the sale of this plow before it was brought to you for repair, have you?

A. No, sir.

X Q. 47. Could you be positive that it was in the fall of the year that it was brought back for repair—that is 1852?

A. Do not think it was. I would not be positive that it was in 1852.

X Q. 48. May it not have been prior to September, 1852?

A. I could not say as to that. I think we had fire in the stove, as we had generally after it got somewhat cold in the fall. I am not sure that we had fire in the stove, and I think we were sitting around the stove with the fire in it when he brought it in.

X Q. 49. You are not sure that it may not have been September, 1852?

A. I am not sure, as it was a common occurrence to have plows brought in for repairs.

X Q. 50. Plows of this kind?

A. Several of them were broken and brought back.

X Q. 51. This had been before 1852, had it not, and frequently?

116 A. Yes; I think we were manufacturing these plows for two or three years, that is, the wooden double shovel plows; I am not certain when we commenced—what year.

X Q. 52. Is there any way by which you can fix when you commenced to manufacture those wooden double shovel plows?

A. No; I do not know that there is. I did not see any in that memoranda book. I did not see any that was sold and charged before 1852, but they were not all charged that were sold, and I cannot tell whether we manufactured in '51 or not.

X Q. 53. You may have maufactured as early as 1848 or 1849, may you not?

A. I think not sooner than 1850.

X Q. 54. You will not be positive that you did not manufacture earlier than 1850.

A. I would not be positive.

X Q. 55. What is the full name of Foreman, whom you spoke of as having made the wood-work for you?

A. Aaron Foreman.

X Q. 56. Where is he?

A. Well, I think he is dead.

X Q. 57. What part of the wood-work did he make?

A. All the wood work; I did the iron-work.

X Q. 58. Did you attribute the breaking of the plows to imperfection in the wood-work?

A. In the wood-work itself, yes.

X Q. 59. Was it the defect in the quality of the wood, or was it simply because the quality of the wood was not sufficiently strong and durable for the purpose?

A. They were all liable to break there where the brace went
117 through the wooden beam, but I think the material in them was not very good; but the best of them would break there where the brace rod went through the beam.

X Q. 60. May it not be then that the breaking of the plows was partly due to imperfect workmanship on the part of Foreman?

A. Not in the workmanship. The material in part was not as good as it might be.

X Q. 61. Your object in changing from wood to iron was to secure greater strength, was it?

A. Yes; that was one object, and got a better plow every way. That was one thing that led me to think about it at first, I believe, more particularly than anything else.

X Q. 62. In what did you secure a better plow? By such an advantage in the additional strength and durability of iron over wood?

(Objected to as immaterial.)

A. Some people differed about it; some claimed that the wooden plow was as good as iron. I thought that they were better in every way.

X Q. 63. Can you specify any advantage which you obtained in the iron plow, as made by you, over the wooden plow, as before made, other than what was due to the greater strength and durability of the material used?

(Objected to as immaterial and not in cross-examination.)

A. There was one advantage: the wooden plows had brace rods attached from the beam across to the standard, which we did not have in the iron plows, to catch the weed, straw, &c., and which check the plow in running. At any rate I always thought the iron plows run into the ground better.

118 X Q. 64. It was because of the greater strength of the material used that you were enabled to dispense with the brace rod, was it not?

(Same objection.)

A. Yes, sir; the beam and standards was all one piece with the iron plows; in the other case it was two pieces mortised together.

X Q. 65. Did you make your double-shovel iron-beam plows without the brace rod?

A. Yes, without the brace rod running from the main beam to the standard. The brace was between the two beams and kept them apart their distance.

X Q. 66. Had you, before you made these plows, seen or known of single plows made with iron beams?

A. I know I had seen a Hall & Speer plow, with an iron beam, call' the "Hall and Speer patent iron-center draft plow"; that was a stirring plow and sod plow.

X Q. 67. Had it an iron beam curving down to form a standard for the plow?

A. Yes.

X Q. 68. How long had you known of the existence of that Hall & Speer plow?

A. Several years; I don't remember how long.

X Q. 69. Had it been in use in your neighborhood, or in the towns about you, for some time?

A. Yes.

X Q. 70. You have stated in your direct examination that at the time of making your application for a patent on the double-shovel iron-beam plow you were acquainted with the provisions of the patent law about the time within which application must be made after the plow having the invention was constructed. What was the time allowed by
119 law at that date for making the application after the device was made and put into use or on sale?

A. The law said that it should not be abandoned for two years.

X Q. 71. You were advised at that time, were you, that the law allowed you two years after you began to make and use or sell your invention before you applied for a patent?

A. No; I understood the law to be that the application must be made before it had been used two years or it would be abandoned to the public.

X Q. 72. You understood the law to be that you might make the application within two years, did you?

A. Well, yes; something like that. I don't remember exactly now; I had the patent law.

X Q. 73. Is your recollection as to the law allowing you two years within which to make an application based on anything that you saw or heard at that time, or is it based upon what you have been told since that time?

A. Well, I had the law at that time, and I think I had made application so as to get inside the limits of the law. I don't know whether I understood your question exactly.

X Q. 74. You think, then, that you made your application within the time allowed by the law as it was at the time, but are not sure that the law then allowed two years within which to make the application or not; is this the case?

A. Yes.

X Q. 75. Was there anything peculiar about this broken double-shovel plow of Holland's to suggest your substituting iron, any more than there had been about the breaking of other plows prior to this time?

A. No.

120 X Q. 76. You would not say, then, would you, that the making of the iron beam double-shovel plow was suggested particularly by the breaking of the Holland plow any more than by the breaking of others?

A. No, sir.

X Q. 77. It is your impression, is it, that you began to make and sell these double-shovel plows before any other had been made?

A. I am not sure whether there was any others made before I sold any or not; if there was any others made before I made them, I never seen them or heard of them, but as to whether there was others made or sold, I don't know.

X Q. 78. How early in 1853 can you be sure that you sold your first double-shovel plow—iron-beam plows with curved standards?

A. I could not say when I sold the first one.

X Q. 79. May it have been later than 1853 that the first one was sold?

A. I do not know; I could not tell the fact. I could not find a charge of any of them earlier than that, but half of them were not charged on the little memoranda book that I brought with me from Ohio.

X Q. 80. You did not charge all you sold, did you?

A. No.

X Q. 81. Could you swear positively that you did not sell some prior to 1853?

A. I cannot swear positively; no, sir.

X Q. 82. How long after you began to make them did you begin to sell them?

A. I could not tell. I presume the next season.

121 X Q. 83. Did you first make a complete plow, or did you make a small model?

A. I think I made a big plow first.

X Q. 84. And the first one you made you made like that shown in your patent, did you?

A. Yes; except with wooden handles.

X Q. 85. How soon after you made that did you make your second?

A. I don't think I can tell that.

X Q. 86. Was it within a few weeks?

A. I don't know.

X Q. 87. Were these plows ready for sale and in your shop for sale since that time?

A. No; not all of them. I had them in my shop for sale after we got to making them.

X Q. 88. Was there any privacy or secrecy about the making of the first plows?

A. No; I didn't keep it a secret. I made them in the shop openly.

X Q. 89. From the time the first was made did it stand in the shop, with others, for sale?

A. I could not remember whether it was in the shop with others, or whether it was sold before others were made, or how long before I made any others.

X Q. 90. Did you use the first one yourself or have it used or tried in any way before it was sold?

A. I think I made experiments with it in the ash pile near the shop. Once I took it on to my own from along about that time. I am not certain that year or not.

X Q. 91. You are not sure you used it at all before you sold it, are you?

122 A. No; I am not entirely sure of that.

X Q. 92. Had you any doubt from the time it was completed but what it was an operative and successful plow, and improvement upon the wooden double-shovel plows?

A. No, sir; I had no doubt but it was an improvement on the wooden double-shovel plow. I improved on the first iron-beam double-shovel plows I made.

X Q. 93. In what way did you improve on it?

A. We made iron handles instead of wooden handles. The wooden handles had to have an iron brace welded to the beam to hold it up, and the iron handles were double—one part acted as a brace itself.

X Q. 94. When did you first make the iron handles?

A. I could not tell that. We made some, several with wooden handles first before we made the iron handles. I do not know whether we made more than one or two. We made some wooden and iron afterwards. Some people liked the wooden handles just as well.

X Q. 95. You will not swear positively that you made your first iron-beam double-shovel plow before the end of 1853, will you?

A. No, sir; I will not.

X Q. 96. Will you swear positively that you made it before the summer of 1854?

A. I am pretty sure I made before that my first plow, and am pretty well satisfied of it.

X Q. 97. I did not ask you whether you were pretty well satisfied, but whether you are absolutely certain and will swear positively that you made it before the summer of 1854?

A. Yes, sir; I am positive I made it before that.

123 X Q. 98. You cannot say how long before that, certainly, can you?

A. I do not know how long, but I am kinder of the idea that I commenced to make my first plow in 1852; whether I finished it then or not I don't know of that; probably I did.

X Q. 99. After you made your contract with Mr. Laizure, what steps, if any, did you ever take to get your patent through and allowed?

A. I employed Munn & Co., of New York, to make out my papers for me. Laizure told me that he had written to Munn & Co. about it; he told me they would put it through for $25, and if they did not get a patent they would not charge anything.

X Q. 100. When did you first write to Munn & Co?

A. Well, I don't know exactly when, but it was very long before 1860.

X Q. 101. Are you sure it was not before 1860?

A. No.

X Q. 102. From the time that the letter was sent into the Patent Office, notifying them that he claimed to be the first inventor, until along about 1860, you took no active measures to secure a patent, did you?

A. No, sir.

X Q. 103. How were you engaged during all those years?

A. Engaged in working at my trade, blacksmithing, making some of these plows, shoeing horses, ironing wagons and carriages, and all kinds of work that come in.

X Q. 104. Were you making and selling these plows, that is, the double-shovel iron-beam plows, during all the years from the time when you made your first until 1860, were you?

124 A. We made every year more or less, from the time I commenced them, making and selling them.

X Q. 105. And other persons in the neighborhood or in the country about began making them about the same time as this, and continued to make them and sell them through all these years up to 1860, did they not?

A. I do not know whether they did or not. I know Laizure did.

X Q. 106. Did any of the towns there?

A. I do not know whether they did or not through the country; I did know of a blacksmith who made some, his name was Hearn, William Hearn.

X Q. 107. Did you know that during that time plows of the same description were made more or less by other manufacturers?

A. I think they were, yes; but as for the neighborhood in the country, I do not know whether they made them or not, but they were made at a distance from our place I am satisfied.

X Q. 108. They were always sold by other manufacturers, were they not?

A. Yes, sir; I suppose so.

X Q. 109. Did you take any steps to stop their manufacture or give any notice that you claimed the exclusive right to their manufacture?

A. Yes, I told some of them that I was going to prosecute the patent.

X Q. 110. Who did you ever tell, and when?

A. I told Sam McGraw, who worked down below our place at Unionville, for one, and I believe I told William Hearn, too.

125 X Q. 111. Where are these persons now?

A. I could not tell where McGraw is. Hearn is dead for a number of years now.

X Q. 112. Can you name any others whom you told?

A. I do not know that I recollect any others.

X Q. 113. Before you communicated with Munn & Co. had any offer been made to you to obtain a patent by other parties?

A. I do not know that any party ever made me an offer to obtain a patent.

X Q. 114. Had any party or parties proposed to pay you something for the patent after it was obtained, if you got one?

A. No, sir; never had any offer of that kind.

X Q. 115. How soon after you obtained the patent did you have an offer for it?

A. Never had any offer, I believe, until about 1868 or '69, after I moved out to Iowa. W. P. Brown made me an offer for it then.

X Q. 116. Was nothing ever said to you, either then or after the patent was granted, about paying you for the patent if you secured one, or of paying you for it after it was obtained up to the time W. P. Brown approached you?

A. Not that I now remember. John A. Bingham told me he rode with a man from Washington who told him that the patent had been rejected, and told him that if it was managed right it could have been obtained. Nobody ever offered me anything.

X Q. 117. After the patent was granted did other parties continue to make and sell these plows in other parts of the country? I mean the iron-beam double-shovel plows?

A. Yes, I believe they did sell them.

126 X Q. 118. Were they sold extensively by other parties up to the time you disposed of the patent?

A. Well, I disposed of some counties soon after the patent was issued. I had complaint from the man who I sold to there was other parties manufacturing and sending plows into other territory, but I don't know to what extent.

X Q 119. Did you ever do anything to stop these parties from manufacturing or selling? I mean the infringing parties.

A. No. I told this man that I sold this county to that he had the right to defend the patent, and that I could not do it for him. I have never been into any suits about it.

X Q. 120. You never notified anybody that he must stop making or selling or he would be sued, did you?

A. Yes, I think we had little circulars out through the country, sent them all over the country, notifying folks that I had obtained a patent.

X Q. 121. Have you one of those circulars?

A. No, I have not.

X Q. 122. Can you tell where one can be found?

A. Leggett has got some of them. I have not seen any of them for a long time. Laizure had some of them, I think. W. P. Brown had a lot of them too. I don't know what there was in them.

X Q. 123. You cannot state that any particular notice was ever given to any person who was making or selling these plows he must stop or you would sue him, can you.

A. No, only verbally. I believe I made some, only I don't remember what was in the circulars now, but I know I told some of them when I met them; I don't know that I gave them other notice unless contained in this written circular we sent out. When I would meet persons
127 who were making these plows, I would tell them I would prosecute them unless they stopped, but I never done it.

X Q. 124. Did you know that any suit was ever commenced upon this patent during the original term of it, before the extension?

A. I did not know that any suit was commenced.

X Q. 125. Did you know of any suit having been commenced since the extension prior to the present one?

A. I do not know.

X Q. 126. How much territory did you sell or dispose of in any way prior to 1869?

A. I do not know how much: I sold the State of Ohio and part of Pennsylvania, but I do not know how much.

X Q. 127. When and to whom was the State of Ohio sold, and when and to whom a part of Pennsylvania?

A. I can give you the date of the first sale; it was three counties; I sold them to a man named Wirich; sold him Stark, Holmes, and Wayne Counties. I don't know what year it was; probably in 1861 or 1862. Belmont County was sold to Mr. Gavoon and somebody else, about 1861 or 1862. Sold a part of Jefferson County to Thomas Ryder. Cummings sold Allegheny County. I sold another county to a man by the name of Heilbert; that was Ashland County. I sold three counties, Knox, Morrow, and Richland, to a man by the name of Van Buskirk. There were some other counties sold down in the southern part of the State by Cummings.

(Complainants' counsel objects to the question referred to, in that an abstract of title already in evidence in the certified copies of file contents of 1869 reissue shows a large number of such licenses.)

128 X Q. 128. Did you license those parties, or did you sell them the territory?

A. Those I have mentioned I sold them territory.

X Q. 128½. How were you paid, and about how much per county?

A. Some of them I never got anything; some I got one hundred dollars per county; in the majority I never got paid. The man I sold three counties to paid me one hundred dollars and a gold watch. Van Buskirk gave me about twenty-five dollars.

X Q. 129 From the date of the issue of the patent up to 1869, plows like those shown in your patent were made and sold in the territory which you occupied, as well as in the territory which you had disposed of, were they not?

A. Some of them, I guess.

X Q. 130. Did you not know that a considerable quantity was made and sold in different parts of the territory which you still owned?

A. Yes; I think there was. I have no knowledge how many; I think considerable.

X Q. 131. What interest did you sell in 1869 to W. P. Brown?

A. I sold him the patent for the balance of the term, as I thought.

X Q. 132. Have you ever owned an interest in the patent since then?

A. No; not as I understand it.

X Q. 133. Have you seen any of the circulars that have been distributed within the last year or two by the present owners of the patent?

No; I have not.

129 X Q. 134. How positive are you that you never have owned an interest in the patent or any of the rights under it since 1869?

A. I am sure, according to my understanding. After the date of the sale to Brown I never supposed I had any interest in the patent since that time, only as far as the extended right was concerned, that I sold to Leggett.

X Q. 135. What bargain did you make with the Leggetts before the extension?

(Objected to as immaterial and not in cross-examination.)

A. I do not know that I could relate the contract exactly all through. (Objected to further from the fact that the contract is in evidence, which is the best evidence.)

I was to give him the extended right for $2,000 after it was obtained; they were to bear all the expenses and to do all the legal work and pay me $2,000.

X Q. 136. Were you ever paid for it?

A. Yes, sir.

X Q. 137. How far apart was your shop and Laizure's shop in Cadiz?

A. Five blocks.

X. Q. 138. Did you ever have any conversation with him in reference to his invention of this iron-beam double-shovel plow besides those you have stated in your direct examination?

A. Yes; we had conversations between the time it was rejected and the time it was issued several times; after we made that contract we talked the matter over.

X. Q. 139. Will you tell the substance of those conversations?

A. One conversation was in regard to a little concern in the
130 beam he proposed after we could not get the patent through; he said he was the inventor of that; it was a little sideband to hold the shovel.

X Q. 140. Was you talking about using it in the same application?

A. We was. We were talking about it after the first application was rejected; between that and the time the patent was issued.

X Q. 141. Was it before or after you made the contract between you?

A. After.

X Q. 142. Did you have any conversation with him in reference to which was the inventor of this plow prior to the contract between you other than those you have named?

A. No, not other than those I named.

X *R.* 143. Did he say any more to you, or you to him, in reference to this matter than you have already stated in other of these conversations?

A. I don't recollect anything more.

X Q. 144. When did you leave Cadiz?

A. We left, I believe, on the 11th day of June, 1868.

X Q. 145. You will not be positive whether Stewart McCoy did or did not sell any of the iron-beam double-shovel plows?

A. I am not positive; no, sir.

X Q. 146. How long could you be positive that you kept the first double-shovel plow with iron beams, after it was made, before you offered it for sale?

A. I could not tell how long.

X Q. 147. Can you state proximately?

A. Well, I suppose it would not be before the next season
131 for selling after it was made; some around that would be in June.

X Q. 148. This is merely your supposition?

A. Yes.

X Q. 149. You have no definite recollection as to how long it was in the shop?

A. No, I have not.

X Q. 150. How long were you in making?

A. I could not tell that from the time I commenced it until it was completed.

X Q. 151. State as nearly as you can.

A. I don't remember; it is so long ago I don't remember whether I made it right up or whether I made a part of it and laid it by and made piecemeal. I don't remember.

X Q. 152. Did any one assist you in the work of getting up this first double-shovel iron-beam plow? . .

A. I think my son, who was a little fellow, helped me.

X Q. 153. You are not positive whether he did or did not?

A. It seems to me that I am pretty certain he did.

X Q. 154. Did any one else assist you?

A. I do not know that they did. I would not say they did not.

X Q. 155. Are you sure to whom it was sold?

A. It seems to me I sold the first plow to Abraham Busby. I think it was the one that I made first.

X Q. 156. You are not positive about that?

A. No; I am not entirely positive.

X Q. 157. Are you positive as to whether you sold the first one you made before you sold others like it?

A. I am not.

132 X Q. 157½. Were there two Abraham or Abram Busbys in Cadiz?

A. This man did not live in Cadiz that I sold to; there was a Mr. Busby other than him in the county of the same name, I believe.

X Q. 158. Where did he live?

A. About three miles northeast of Cadiz.

X Q. 159. Was there any other person of the same name living in the same vicinity?

A. Old Abraham Busby, some three miles further north from Cadiz.

X Q. 160. Were you to have been paid anything for the extended term of your patent in any event, or only to be paid after the extension was granted?

A. That was all I understood; there was nothing to be paid unless the extension was granted.

X Q. 161. In any event you were to bear no part of the expense of securing an extension?

A. No.

Redirect:

Q. 162. During the warm weather what disposition was made of the heating-stove that you used in your blacksmith shop?

A. I generally took it down and stowed it away out of the room.

Q. 163. Was not this always done in the summer?

A. Yes; we always done it every summer.

Q. 164. Did you ever see or hear of an iron brace welded or united to an iron-beam plow, at or near its curved portion, extending between the bent beam and the handle? Have you ever constructed such a brace yourself, as you remember?

133 (Objected to as irrelevant.)

A. No; I do not.

Q. 165. Was it before or after the repairs were made upon the wood plow you sold to Holland you proceeded to construct either your model or a full-sized plow like that shown in the patent here at issue?

A. It was after the Holland plow was brought there for repairs, I think.

Q. 166. Was this Holland plow among the plows you mention, the repairing of which led you first to conceive of the double-shovel iron-beam plows?

(Objected to as leading, as repetition, and otherwise incompetent.)

A. It was one of the plows.

Q. 167. What had this Holland plow to do in first suggesting to you the invention set forth in the patent here in controversy?

(Same objection.)

A. Well, I do not know that I understand the question.

Q. 168. I will explain. What, if any, idea did you get while repairing this Holland plow, among those that came to your shop?

(Same objection.)

A. That plow coming back broken that way, with others—a good many others—satisfied me that kind of a plow would not do, and I concluded to make one of iron beams, as where they always broke was the wooden beams; the standards sometimes broke; the beams were the worst.

Q. 169. What means or advantages did you have during the original term of your patent for proceeding in legal action against infringers of the same?

134 (Objected to as immaterial.)

A. I hadn't very much means to carry it on anyhow, and I didn't know much about law.

Q. 170. Were you personally aware of a majority of the infringements committed, or was your knowledge hearsay?

(Objected to as immaterial.)

A. I could not tell whether I knew a majority or not; I knew of some and heard of some.

Q. 171. Did you notify such as you personally knew about infringing your patent that they were so doing?

A. I think I did; not all of them, but some.

Recross-examination:

X Q. 172. Are you positive that you did nothing toward making your first iron-beam plow until after you repaired the wooden-beam plow for Holland?

A. I think I did not; I might be mistaken, but I think I did nothing at it until after that.

X Q. 173. Is there no way you can refresh your memory so as to be

sure whether you commenced to make that plow before or after repairing the wooden-beam plow of Holland?

A. It seems to me, if my recollection is right, that I commenced that plow after he brought that one in. I possibly might be mistaken, as it might be some other plow, but that is my impression now.

X Q. 174. Where was the Holland plow broken?

A. I think it was the beam or the standard; I am not certain which now; it seems to me it was the beam.

X Q. 175. Was it broke in any different way from what plows had been for some time before?

A. No; not the same kind of plow.

135 X Q. 176. You mean not in any different way from what the same kind of plow had been broken some time before?

A. That is what I mean.

(Complainants' counsel here offers in evidence the press copy of a letter addressed by them Nov. 7th, 1876, to Alexander Wilson, of Rinard, Wayne County, Ill. Also a letter attached thereto, which was received by them in reply. They offer this to show why they don't produce the said witness.

To all of which the defendants' counsel objects as incompetent.)

(Signed) MATHEW G. SLEMMONS.

Sworn to and subscribed before me the first day of December, 1876.

FRANCIS TOUMEY,
Notary Public.

Testimony of John W. Slemmons.

JOHN W. SLEMMONS, being called and duly sworn, deposes and says, in answer to interrogatories proposed to him by complainants' counsel, as follows:

Q. 1. What is your name and place of residence?

A. John W. Slemmons is my name, and Iowa City is my residence. I am a son of M. G. Slemmons.

Q. 2. Did you know of the invention of M. G. Slemmons in plows? If so, where were you employed and in what capacity?

136 A. I do. I was employed in the shop, and helping at Cadiz, Ohio, as assistant.

Q. 3. Please state briefly what you know of the said invention, how it originated, and any circumstances connected with it.

A. My recollection is the first plow I ever saw I helped to make. I think that was the time that plow was broken that was spoken of before—that is, the Holland plow was broken. I think, the same day after that plow came into the shop, my father asked me to make up the fire and get down some iron to make something of which I had no knowledge. I had no idea of what he was going to make, and was curious to know what it was until I saw it come out a double-shovel plow. He did not say to me what he was going to do, and I did not ask him, but I was curious to know.

Q. 4. What was this plow you refer to?

A. It was a wooden double-shovel plow which my father had sold to Holland, as I recollect it, and was broken.

Q. 5. How do you know it was cold weather?

A. Because we were sitting around a stove which was put up there for heating purposes only in winter and removed in summer.

Q. 6. When Mr. Holland brought in the plow was any conversation held between him and your father, M. G. Slemmons?

A. I think that my recollection now is that Mr. Holland threw down the plow and said that here's your damned old plow.

Q. 7. Were you acquainted with Mr. Laizure at that time?

A. Yes; I knew him.

Q. 8. Did Mr. Laizure, in your hearing, ever make any remarks about the new iron double-shovel plows; if so, what, and under what circumstances?

137 A. I think, if I recollect right, he was in the shop one day when there was no one there but me and the hired man; my father was not present, and he looked at the plow, if I remember right, and said that the plow would not work; the bars were too heavy and that it was not worth the iron it was made of.

Q. 9. Were you present at that time?

A. Yes, sir.

Q. 10. Did Mr. Laizure at that time make any claim that the plow was his invention?

A. No, sir.

Q. 11. Did he claim that any part of it was his invention?

A. I do not recollect that he made any claim to any part of it.

Q. 12. Please state any reason you may have for believing the plow to be your father's invention.

(Objected to as incompetent.)

A. Well, I believed it was his invention because I never heard or seen anything of that kind that was ever about the shop, or anything that was made after that fashion; and I further believe it was his invention from the fact that he was dissatisfied with the woodwork that was put in the plows he was manufacturing of the wooden beam kind, and could not get any redress from the man that put them in, and in order to avoid that trouble he went to studying on one that would be entirely of sound workmanship. These are the views I had and have had of how he came to invent the plow.

Q. 13. When, with respect to this time when you saw him sitting near the store, apparently studying, was it that he ordered you to get down certain iron?

A. It was a short time after.

138 Q. 14. Was it usual for your father to study that way while working at his trade?

A. No, sir; he did not generally meditate much, and that is one thing that I was impressed with at the time he was studying about something, and I was anxious to know what it was, but did not make any inquiry.

Q. 15. What was done with that iron you got down?

A. There was two bars, and two different sizes, if my recollection serves me now, and we cut off four pieces of them; we staved up the ends of the lighter pieces and drawed out the ends of the heavier pieces, so that we made a taper and went on to construct this iron beam plow. I don't suppose you want me to give the details?

Q. 16. What iron beam plows do you refer to?

A. The plow upon which he made application for letters patent; this one he made has wooden handles, the one patented had additional forked handles.

Cross-examination by R. H. PARKINSON, esq., of Hatch & Parkinson, counsel for defendants:

X Q. 17. When did your father make the first plow like the one he finally got patented?

A. I cannot say.

X Q. 18. How long after the time when he made the first with the iron beams?

A. I don't understand the question.

X Q. 19. How long after he made the first plow did he make the one with the iron beams?

A. I don't recollect.

X Q. 20. May it have been two or three years?

A. I think not. I have an idea it was within a year or so.

139 X Q. 21. You cannot be positive?

A. I can give no definite time.

X Q. 22. As to whether it was not two years or not?

A. As to whether it was not one year.

X Q. 23. My question is whether you can be positive as to whether it was less than two years after your father made the first plow that he made the plow like the one patented?

A. No, sir; I cannot be positive.

X Q. 24. Can you be positive that it was not before the repairing of the Holland wooden double-shovel plow?

A. I feel positive it was not.

X Q. 25. You are not certain upon that, are you?

A. I am.

X Q. 26. How long after he began to make the first iron beam plow did he complete it?

A. I could not say, not knowing.

X Q. 27. How long after he completed it did he sell it?

A. I do not know.

X Q. 28. Can you state within several weeks?

A. I could not.

X Q. 29. Can you state within several months?

A. I cannot.

X Q. 30. Can you state within several months how long after he began to make the first iron-beam double shovel plow before he either sold or offered it for sale, or sold or offered any like it for sale?

A. I cannot give any positive time, and cannot approximate the time closer than within a year.

X Q. 31. Where did the first double-shovel plow with iron beams remain from the time it was made until the time it was sold?

140 A. My recollection is it was in or about the shop.

X Q. 32. Was it with the wooden beam plows?

A. I could not say; I don't know.

X Q. 33. You have no distinct recollection of the plow after it was made, have you?

A. Nothing, only of their trying it in an ash pile; two hands or two different men in the shop tried it, one holding the handle and the other pulling up by the points of the beam.

X Q. 33¼. How long after it was made was this?

A. I do not recollect.

X Q. 33½. This was the only one which was ever put up before it was sold, so far as you can remember, was it not?

A. Yes, sir, so far as I can remember.

X Q. 34. Are you positive that it was not in the year 1854, in the fall of 1854, that the Holland plow was brought back for repair?

A. No; I am not positive what year it was in.

X Q. 35. Could not be positive it was not in 1855?

A. No, sir.

X Q. 36. Could you be positive it was not as early as 1852?

A. No, sir.

X Q. 37. Was that plow broken in any different way from what you had seen plows broken before?

A. I don't know that I ever seen any but that one broken; never recollect of seeing only that one.

X Q. 38. Just how was that broken?

A. I could not say as to that now; I don't remember.

X Q. 39. When were you born?

A. In 1841—December 25th.

141 X Q. 40. Was the iron beam double-shovel plow made of heavier iron than they were afterward made of?

A. I don't know.

X Q. 41. Please refresh your memory so far as you can, and state what your last recollection about that is?

A. I don't know whether they were lighter afterward, or not. I have nothing by which to refresh my memory about it.

X Q. 42. You are familiar with the double-shovel iron beam plows as they are made at the present time, are you?

A. Yes, sir.

X Q. 43. How would this first one made compare in weight with those common in the market to-day?

A. Is considerable heavier than those I am familiar with in the West, near my home.

X Q. 44. You cannot tell how long after the Holland plow was repaired it was before your father began on the first iron beam plow, can you?

A. I don't recollect anything about its ever being repaired; my recollection is when it was brought in and thrown down and the remark made by him.

X Q. 45. You don't know what was done with the Holland plow, do you?

A. No, sir.

X Q. 46. Have you any idea what became of it?

A. No, sir.

X Q. 47. How long after that plow was brought back for repair before your father commenced on the iron beam plow?

A. My recollection was, it was the same day.

X Q. 48. Can you be sure that it was within a month?

142 A. My recollection is that it was the same day that the Holland plow was brought back that he began to make the iron beam plow.

X Q. 49. What I ask you is not whether you are sure of what your recollection is, but whether you are positive of its being less than a month after the Holland plow was brought back for repair that your father commenced on the iron beam plow?

A. I have nothing to make me positive, only my recollection, that it was the same day that the Holland plow was brought back.

X Q. 50. How much did he do that day?

A. I could not say how much he did or how far he progressed with it.

X Q. 51. Was the iron bent that day?

A. I do not recollect whether it was, or whether it was not.

X Q. 52. State anything that you do recollect that he did do that day.

A. I recollect that he drawed out the two ends from bars and staved

up the ends, drawed the ends of the two bars, staved up the ends of the two bars, as they were to form pieces of the plow in that part of it that required the heavy iron. Further than that I don't recollect how it progressed.

X Q. 53. Do you recollect whether he did any more than that for a month?

A. My impression is that he worked at it between jobs of customers that came into the shop until he finished it.

X Q. 54. How many days should you think he spent in that way?

A. I could not say.

X Q. 55. Have no idea, have you?

A. No, sir.

143 X Q. 56. At the time Mr. Laizure was in your father's shop, as you stated in your direct examination, was anything said by either of you about your father's having invented the plow?

A. My recollection is that the plow was alluded to by some of the hands in the shop as my father's plow, and it was understood by us all that it was the plow that he had got up; that is my recollection now.

X Q. 57. Do you remember anything being said to Mr. Laizure, or in his presence, about your father's having invented that plow; if so, what?

A. I do not recollect of him saying anything about inventing it.

X Q. 58. When was this that Mr. Laizure was in the shop; I want the day as nearly as you can give it?

A. My recollection is, it was in the spring of the year, but I could not give the date.

X Q. 59. Did you know whether the first plow or some succeeding one was in the shop at the time?

A. I think it was the first one.

X Q. 60. How sure are you about that?

A. I don't recollect of any other plow being in the shop at that time.

X Q. 61. Do you live in the same town and on the same place as your father?

A. I live in the same township. Yes, sir.

X Q. 62. You came here with him?

A. Yes, sir.

Counsel for complainants makes the statement on the record that M. G. Slemmons and John W. Slemmons were produced at Cleve-
144 land, Ohio, rather than at their home in Iowa City, because of the particular request that they should be examined here, made by Mr. Stem, of counsel for defendants.

Counsel for defendants here states that he had no intention of suggesting any criticism upon the conduct of opposing counsel in bringing these witnesses to this place, and admits that he regards it as a great convenience to have them here, but his question was designed simply to call attention to the fact, first, that they came here with the intention of testifying, and, therefore, if not provided with memoranda were not here because of being surprised away from home; and second, that they came together and were so situated as to render it probable that they have consulted together about their testimony.

Redirect by counsel for complainants:

Q. 63. In what respect did the first iron double-shovel plow that was made by your father differ from that one which was the subject of his patent?

A. That differed in having wooden handles, that is the first plow; the one patented had a forked iron handle.

Q. 64. How old were you at the time the 1860 plow was made by your father; that is, about how old?

A. I was about eleven or twelve years old, as near as I can come at it.

(Signed) JOHN W. SLEMMONS.

Sworn to and subscribed before me this 1st day of December, 1876.

FRANCIS TOUMEY,
Notary Public.

145 *Testimony of Isaac V. Holmes.*

United States circuit court, district of Kentucky. In equity.

W. W. LEGGETT ET AL.
vs.
B. F. AVERY ET AL. } 3016.

Examination of witnesses for the complainants in the above-entitled cause, formal notice being waived at Cleveland, Ohio, December 4th, 1876, at the office of M. D. Leggett & Co., before Francis Toumey, notary public and shorthand writer.

Present, R. H. Parkinson, esq., of Hatch & Parkinson, counsel for defendants, and M. D. Leggett & Co., counsel for complainants.

ISAAC V. HOLMES, recalled by the complainants, in answer to interrogatories propounded to him by Wells W. Leggett, esq., deposes and says.

(Counsel for defendants here offers in evidence letters patent granted to George W. Brown, dated June 5th, 1849, being the same referred to by the witness Millward in his answer to interrogatory 4, and already marked in the case Respondents' Exhibit Brown patent of 1849.)

Q. 1. Are you the same Isaac V. Holmes who has before testified in this case?

146 A. I am.

Q. 2. I call your attention to certain exhibits which were introduced by the defendants in the examination of Frank Millward, their expert, before interrogatory 4 of his deposition. Please examine the said exhibits and state what bearing they have upon the invention secured to Mathew G. Slemmons by reissued letters patent No. 6131, upon which suit is brought.

Also in that connection I refer you to a certified model from the United States Patent Office in the matter of letters patent, granted to Isaac Edwards, dated September 19th, 1846, which is here produced and marked, Complainants' Exhibit, Edwards Model.

A. In examining the various exhibits submitted to me, I will take them according to their dates and commence with Mein's patent of 1841. In this I find shown and described a construction of a plow, the double plow composed of a beam constructed as follows: The front portion or central part has united to its rear end two parallel side pieces, and to these side pieces are attached the separate standards which carry the plow. I find these two parallel side pieces which from the rear portion of the beam have their forward ends bent into an angle so that they both close to a central forward portion and are united by bolts. I find

also that the position of the standard for the forward plow is so located that the point of the plow projects forward of the rear end of the central part of the beam. Upon turning to the Respondents' Exhibit, Leggett's reissue No. 6131, I find the improvement therein to consist of the three elements: First, the two diverging beams; second, these
147 beams are fastened together at their forward ends; third, the rear portion of these diverging beams are bent downward to form shovel standards.

In the Mein's patent of 1841 I do not find two diverging beams united at their forward ends, at the point of attachment for the draft, but a composite beam formed of three pieces, the forward, however, being composed of a single piece and a rear portion of two parallel pieces I also do not find that any portion of the beams are bent downward to form shovel standards, but that separate pieces are attached to the sides of this composite beam and bolted thereto, and to these separate pieces are attached the plows; therefore, in view of these facts I do not find in the Mein's patent of 1841 the improvements and invention claimed in the said exhibit, Leggett's reissue No. 6131.

Upon examining the Edwards patent of 1846, I find shown in the drawing and also in the model submitted of the same, a triangular formed cultivator, consisting of one central bar and two outside angular bars, with their forward ends brought closely to each other and held loosely in position by the clevis bolts. I also find that the rear ends of these three bars are kept in position by peculiarly constructed bars which allow a vertical adjustment of the different parts to each other; also by the forward ends being loosely united by the clevis bolt the different parts of the apparatus can be adjusted in a lateral manner by the twisting movement and also by this flexible action. This device, in form and arrangement of parts, is similar to the ordinary triangular cultivator. The improvement consists in providing for this looseness of the parts, one with the other, so that the different portions can be raised or moved laterally to accommodate the hoes to inequalities
148 of the ground, etc., and as I do not find in this device that the forward ends of the beams are rigidly united to each other, but that instead it is specifically stated that they are not to be united rigidly, and the device which is used to connect them together is of such a character as will not allow of their being rigidly united, also the rear portions of these beams are not bent downward but are provided with separate pieces or supports for the plows which are bolted to these beams; therefore, I am fully of the opinion that none of the improvements claimed in Leggett reissue No. 6131 are found in the Edwards patent and model of 1846.

In respondent's exhibit, Hall's patent of 1848, is shown and described a device constituting a single ordinary plow. It has a wrought iron or metal single beam, the rear ends of which are attached to the point and plowshare forming the plow. Therefore, as I do not find in this exhibit diverging beams rigidly united at their forward ends or anything in the specification or claims that would suggest any such construction, I am clearly of the opinion that none of the improvements claimed in the complainant's reissue patent No. 6131 are found in exhibit, Hall's patent of 1848.

In respondent's exhibit, Brown's patent of 1849, I find shown a peculiarly-constructed cultivator, consisting of one main central beam, to which is adapted a series of levers, cross-bars and diagonal braces for the purposes of supporting the shovel points; these diagonal braces

are pivoted to the forward end of the main beam so as to allow lateral adjustment to the outside plows and that the point of draft is by means of a separate beam attachment, its rear end to the upper part of the main beam. In this device there is only one plow point attached to the main beam, and that is by means of a standard bolted
149 at its forward end; the two outside plow points are supported upon standards bolted to the short angular adjusting bars. In this device there are no diverging plow-beams and the attachment for the draft is not united at the forward end of the apparatus, and no part of the structure is bent downward to form standard supports for the shovels. Therefore, I do not find in this device any of the elements or improvements claimed in the complainant's reissue No. 6131.

Upon examining Respondent's Exhibit, Forman's patent of 1852, I find a peculiar combination forming a single cultivator or plow; in this device the standard supporting the shovel point is formed by extending downward the handles, and it is provided with a single beam, the rear of it bent in curve form and united to the lower portion of the handles so that it can be adjusted to change the draft. As I do not find in this device the two diverging beams united at their forward ends, and as I do not find portions of the beam bent downward forming supports to the shovel, therefore I do not find in this exhibit any of the elements which constitute the improvements and invention set forth in complainant's reissue patent No. 6131.

Upon turning to respondent's exhibit, Pagett's patent of 1852, I find represented and described a device for a shovel-plow, consisting of a single main beam, the rear end of which is bent downward and forms a support for the shovel. I also find the description contemplates the construction of a two or three beam plow, and he describes the construction as follows: "On each side of the beam and sheath may be attached a shorter piece corresponding in shape with the first-mentioned beam and sheath, thus making three sheaths, which, in addition to three
150 smaller shovels, will answer the purpose of a cultivator. To make a double-shovel plow on this plan the main beam and sheath and one applied must diverge equally from the line of draft or front of the beam;" and as I understand this language to form a double cultivator, he would attach to the body of the main beam a shorter piece bent sidewise; and at this point of attachment he would also bend in an opposite direction the rear portion of the main beam, thereby forming the structure, the front portion of this main beam being central with the line of draft, and to the forward end would be attached the means of draft; my reason for this construction would be in the use of his words wherein he says, "on each side of the beam and sheath may be attached a shorter piece." Therefore, it being shorter than the main beam it must be attached at some point toward the rear end of it; therefore, that structure would not form a device composed of two diverging beams each equal to each other, or substantially so, and united at their forward ends, as described and called for in the complainant's reissue No. 6131. Therefore, as I understand the construction implied in the language of this patent, I don't find in such a device the features and invention set forth and claimed in the complainant's reissue patent No. 6131.

In the respondent's exhibit, Harrison & Metcalf patent of 1853, I find shown and described a side-hill plow. This device has a single central piece, the rear end of which is bent downward and for the purpose of providing a pivot point. This pivot point, in combination with a colter bar attached to the body of the beam, forms the bearings upon which the plow rotates. And as I do not find in this device the diverg-

ing beams united at their forward ends for the purpose set forth
151 in the reissue patent of complainants, No. 6131, therefore, I do not find in this exhibit the invention claimed in the reissue patent of complainants, No. 6131.

Upon turning to respondent's exhibit, Brown patent of 1854, I find a peculiarly constructed cultivator, consisting of two side pieces, the rear ends of which are united by a cross-bar, to which are attached the standards for the shovel plows. These two side pieces are of such a length, and are united at their forward ends, so that they form the tongue of the cultivator, and the point of attachment is located at about one-third the length from the rear end. Therefore, as I do not find in this structure two diverging beams united at their point of draft, neither were these rear ends bent downward, forming shovel supports, I do not find in this device the invention and improvements set forth in complainant's exhibit, reissue No. 6131.

The respondent's exhibit, Black's patents of 1857, shows in the drawings a double-shovel plow, consisting of two diverging beams, united at their forward ends, and the improvement specified in the patent and shown is the applying to this structure the addition of a short central bar proceeding from the joint or point of union of the two beams, supported at its rear end by a cross-bar for the purpose of preventing the horse from getting his foot in the crotch. The drawing of the plow proper represents substantially the device shown and claimed in the Leggett Reissue, No. 6131.

Q. 3. Now please examine complainant's exhibit, Pagett's rejected application of January 22nd, 1852, and please state wherein the construction there shown in the drawing as respects the diverging beams compares with the description contained in the defendant's exhibit, Pagett's patent of 1852.

152 (Objected to as incompetent.)

A. As I understand the language of the 1852 patent, and the drawing of the rejected application, I would say that the construction with regard to the three-plow device is the same, as I understand the language of the patent: the only difference is, the two shorter pieces are stopped in this drawing so that the point of divergence is not located on the main beam at the same point. My understanding of the said language being that these two shorter pieces would be attached opposite to each other at the same point on the main beam in the Pagett patent. And in regard to the construction of a double plow, my understanding is that one of these shorter pieces would be removed and the rear portion can be bent to take its place, thereby forming the rear portion in the form of a triangle.

Complainant's counsel state that they will produce in argument at the hearing, in order to show the state of the art following the application of M. G. Slemmons, the following drawings:

In the rejected application of B. N. Carpenter for cultivator, filed March 24th, 1855.

Rejected application of Routh & Newman, cultivator, filed June 25th, 1856.

Rejected application of M. B. Dillinger, cultivator, July 7th, 1859.

Rejected application of J. Whetsel, cultivator, filed August 9th, 1855.

And the said drawings are here introduced as exhibits in the case.

(Counsel for defendants objects to the said exhibits as irrele-
153 vant and incompetent, but waives any objection to the want of certificate to the same, and stipulates that they may be referred

to and used to the same effect as if duly certified by the Patent Office.

Recess for dinner.

Reassembled at 2 o'clock p. m. Same parties present.

Cross-examined by R. H. PARKINSON, of Hatch & Parkinson, counsel for defendants:

X Q. 4. Suppose two shovel-plows similar to that, a side view of which is shown in Fig. 2, patent of W. F. Pagett, March 30th, 1852, were riveted together at the front so as to be rigidly secured there, and so as to diverge from the front equally from the line of draft, would such a device, in your opinion, embody the invention described in the patent sued upon and specifically claimed in the first claim thereof?

A. It would, provided the point of attachment of the two being rigidly united would be the point of attachment for the draft.

X Q. 5. In a device constructed as described in the last question, the point of attachment of the two beams would be the point to which any workman accustomed to the use of plows or cultivators would attach the draft, would it not?

A. It would, as I understand the question.

X Q. 6. Suppose the device constructed as described in the first interrogatory embodied also at the front a loop or eye similar to that shown in the front end of Fig. 2 of the patent referred to, would it then embody the features specifically claimed in the second claim of the patent sued upon?

A. If these two ends of the beams were fitted and riveted to
154 each other, or welded so as to be merged into a device, as specifically mentioned in said second claim, then in such a case, such an end, if given the shape of a loop or eye, would embody the features of the second claim.

X Q. 7. My question was not whether, if the device was merged into just such a loop or eye as is described in the second claim, it would have the features of the second claim, but it was this, which you are requested to answer directly: Supposing two shovel plows, like that shown in the Pagett patent of March 30, 1852, were riveted together at the front end so as to be rigidly secured there, and so as to diverge at equal angles from the line of draft, and provided in the front end with just such a loop or eye as that shown in the front end of figure 2 of the Pagett patent, would such a device embody the features specifically claimed in both the first and second claims of the patent sued upon?

A. It would.

X Q. 7½. Suppose, now, instead of being united at the very front end, these two plows, constructed as described in the last question, diverged at a point from one to two feet in the rear of the front end, and were, from that point to the front, either welded or riveted fast to each other, the loop or eye remaining as before, would that device embody the invention specifically claimed in both the first and second claims of the patent sued upon?

A. When the point at which these two beams commence to diverge has been extended so far from the front end, the point of attachment, that the line of strain is curved to that extent that the stiffness of the beam is impaired, then such a structure would not, in my opinion, be the device claimed. And in regard to the dimension named in the question, my judgment would be, one foot would not change the con-
155 dition, while, if extended to two feet, it might; and, in that case, would not come under the conditions named in said patent.

X Q. 8. Do you understand the Slemmons patent to specify how far from the front the junction of the beams must be in order to bring the device within the patent, or to obtain the advantages of the invention there described and claimed by Slemmons patent; I mean the patent sued upon?

A. There is no specified dimension with regard to it, but the descriptive matter speaks of their being so united that the draft ring or clevis by which the plow is drawn will pull equally upon both said ends, and also speaks of their being so united that the clevis will operate uniformly upon both of them in drawing the plow along. Now, when this point of divergence is so far from the attachment for the clevis that the strain will not operate uniformly upon both of them, it has reached a point where the Slemmons patent ends, as I understand it.

X Q. 9. According to your theory, if they are extended in one piece a single inch the draft will not operate uniformly upon them, will it? And the increase of the distance will only increase the difference of draft?

A. The uniting them one inch or several inches would not affect practically the action of the draft upon the plow, because this point would have to be extended sufficiently to overcome the stiffness of the metal.

X Q. 10. Just state where the difference in draft would begin; if it is not a difference in degree it must begin somewhere; if it does not begin with the divergence and increase only in proportion to the divergence, where does it begin, and what new cause comes in at that point to produce it?

156 A. It commences at such a point where the stiffness of the metal of the two beams would be insufficient to secure the proper strength, and from that point be a matter of degree.

X Q. 11. Will you say, as a mechanical expert, that with two devices united in the way described in my question and made of iron metal, of the size commonly used in plows of that kind, there would be a perceptible difference upon the two shovels if they diverge at a point three feet in the rear of the clevis.

A. There would not be any difference in the direction provided the resistance was the same; but if the resistance was unequal, then the strain on the two plows would be unequal, and the result would be a bending of the beam.

X Q. 12. By resistance being the same do you mean the resistance caused by the earth through which the several plows pass?

A. Yes.

X Q. 13. Is this the difference in strain upon the plows to which you have referred in your several last preceding answers?

A. That resistance is the measure of the strain, while the line of strain would be outside of the resistance of the metal of the beam.

X Q. 14. Would not the difference in the resistance of the earth cause a difference in the strain upon the several plows, whether the point of divergence was at the clevis or three feet in the rear?

A. It would.

X Q. 15. You consider it one of the essential features of the Slemmons invention that the line of draft is preserved within the line of beam of the plow, do you?

157 A. Not exactly.

X Q. 16. Then you do not consider it necessary in order that the device fall within the Slemmons patent that it be so constructed that the line of draft will fall within the line of the beam of the plow?

A. Not exactly. The line of strain may fall either to one side or the

other, as long as that divergence is not enough to affect the strain on the other beam.

X Q. 17. The divergence, however slight, would have some effect upon the strain, would it not?

A. Not practically.

X Q. 18. I am not asking for your opinion as to when the strain becomes practically of any importance, for I believe you have already declined to fix the precise point at which it becomes practically of any importance. I am asking you whether any divergence of the line of strain from the line of beam would not produce some difference in the strain upon the other beam?

A. Theoretically, it would be very slight; it would not affect the working of the device.

X Q. 19. Then I understand you to express the opinion that it is not essential to the Slemmons invention, or a part of that invention, to keep the line of draft within the line of beam, but that, in your opinion, there is a point outside of the line of the beam beyond which the draft cannot be carried without carrying the device outside the Slemmons invention as patented, and that there is nothing in the Slemmons patent to indicate how far outside of the beam this line of draft may be carried; that this must depend upon the judgment of the mechanic, and that the effect produced by carrying the line of draft outside the beam increases
158 in degree the further it is carried; is all this true? If not, what of it is?

A. I will answer yes to all that part relative to the line of strain in relation to the line of beam, and my former answer fully set forth to what extent such a deviation can be carried, as I understand it; also, that the specification and drawing do not fully determine the same. My opinion in regard to the mechanical construction would be that a mechanic would keep the line of beam as near as practicable to the line of strain.

X Q. 20. You think, do you, that the advantage of this would be sufficiently understood by any ordinary mechanic without a specific description?

A. I do.

X Q. 21. Do you think this would have been true at any time within the last twenty-five years?

A. I should think so.

X Q. 22. You do not think it necessary to specify the distance from the front of the plow within which the converging beams must be united in order that a mechanic of ordinary skill may understand the importance of uniting them at such point as to secure the draft substantially within the line of the beam?

A. I do not, as any ordinary mechanic who would be competent to construct a plow would naturally understand the points to be obtained.

X Q. 23. Please look at the figure marked 1, in the explanatory circular now shown you, and state whether, in a double shovel plow whose beams converge in the manner there shown, the line of draft would or would not fall considerably outside the line of the beam?

159 A. From my judgment of proportion I should consider it would fall but a very little out, not enough to affect the device.

X Q. 24. Would it not, as a matter of fact, fall much farther from the line of direction of the beam in that case than in the case of a double shovel plow whose beams diverge equally from the main beam at a distance of three feet from the front end or clevis of the plow, supposing the angle of divergence be that common in that class of plows?

A. I think the difference would be so marked, that is, that the line of

strain would run so near to the line of the beam in exhibit marked 1, while it would be so far in the second case referred to, that no comparison could be instituted.

X Q. 25. In that case do you think the difference in the strain upon the beam itself, produced by the difference of resistance upon the plow, would be greater?

A. It would be greater in the second case cited.

X Q. 26. Would you consider a double plow having the beams in the manner shown in figure 1 of the explanatory circulars as embodying the invention of the Slemmons patent?

A. Yes, sir.

X Q. 27. As stated in both the first and second claims?

A. Yes, sir.

X Q. 28. Still you would consider the front end there shown as embodying the additional element of the second claim as you understand it, would you?

A. To a certain degree it does.

X Q. 29. If you were asked whether a double shovel plow united in front as there shown, and with the hook formed as there shown,
160 having also the curved standards, did or did not embrace the invention stated in the second claim of complainant's patent, would you say that it did or did not?

A. I should say it did.

X Q. 30. Supposing two shovel plows like that shown in the Pagett patent were united rigidly one foot behind the front ends of the beams, and one of the beams extended only so far as was necessary to rivet it or weld it fast to the other beam, and the line of divergence of each beam from the line of draft was the same, would or would not such a device in your opinion embody the invention claimed in the first claim of the patent sued upon?

A. I should consider it within the claim.

X Q. 31. If the loop or eye shown in the Pagett patent was retained in the front end, it would embody the improvement recited in the second claim of the complainant's patent, would it not?

A. As I understand the question I should answer yes.

X Q. 32. In your direct examination you expressed the opinion that the double shovel plow described in the Pagett patent would differ from that in the Slemmons patent in that the beams would be unequal in length. Do you consider it necessary in order that the invention claimed in the first and second claims of the complainants' patent be present that the diverging beams be of equal length or substantially so?

A. The Pagett two shovel plow is formed by uniting a short beam to the side of the main beam, leaving a portion of the main beam extending forward to the point of attachment, while the Slemmons plow consists of two beams of equal length or sufficient difference to change the rank of the plow, these two diverging beams being united at their forward ends.

161 X Q. 33. Please answer my question directly, which is, whether in your opinion it is essential in order that the plow embody the invention claimed in the first two claims of the patent sued upon, that the two beams be of substantially the same length; or is not this essential, in your opinion?

A. It is not essential, and it is not shown so in the drawing.

X Q. 34. Then a plow having two beams so curved as to form the standard rigidly united anywhere within a foot of the front end or point of attachment, and diverging equally from the line of draft, would, in

your opinion, embody the invention claimed in the first claim; and if it had the eye or loop shown in the Pagett patent, would also embody the invention claimed in the second claim, would it not?

A. I should consider it would come substantially under the first, although it would more positively be covered by the second.

X Q. 35. Does the Pagett patent, in speaking of the double shovel plow, refer to one beam as being shorter than the other, or does it refer to the shorter piece only in connection with the description of the cultivator?

A. It speaks first of the use of the shorter piece in connection with the three-shovel combination, and immediately goes on to speak of the double combination, and uses the term so that to my mind the inference is very strong that he meant to use the same short piece.

X Q. 36. Supposing wooden double-shovel plows to have been commonly known at the time this description was written, and to have been invariably united at the front end with the beams diverging equally from the line of draft, and the person who read the description to have been familiar with that kind of a plow, would you or would you not understand him, when he spoke of constructing a double-shovel plow with the iron beams attached at the front with the beams diverging equally from the line of draft, to have in mind an attachment similiar to that common in the double shovel wooden beam plows then in use, or would you not?

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(Objected to, as such a state of facts is not shown to have existed, nor does the description point, as the question does, to the front end of the beams.

Counsel for defendant objects to any effort on the part of counsel and party to the suit to testify during the deposition of this witness, and refers the court to the exhibits already in evidence, and especially to the exhibit marked Defendants' Exhibit Wooden Plow Number One, as showing the incorrectness of the testimony here offered by complainant, or complainants' counsel.)

A. I should think not, because if he had had any such idea in his head, he certainly never would have spoken of this shorter piece being used to form the triple or double plow. Also, in speaking of making double shovel plows he speaks of the main beam and sheath and the one applied, carrying the idea that there was a central main beam to which the secondary one was applied to form the double shovel.

X Q. 37. Now assuming that it is not specifically stated in the Pagett patent that the shorter beam has to be applied in the double shovel plow, and assuming also that by main beam is meant simply the one to which the loop or eye for the clevis is to be attached, would or would not the reasons which you name in your last answer for making the answer negative exist?

A. Such a construction of the words of the specification would be so indefinite that the piece to be attached might be carried to the forward end, if it was not for these words; he speaks here of the "front of the beam;" if he had used the words, "front end of the beam," then I think he could have carried the second beam up to the end.

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X Q. 38. As he has not used the words "front end of the beam," do you think it would be impossible for him to carry the second beam within a foot of the front end?

A. He might under such an assumption as stated in the question.

X Q. 39. If a double-shovel plow is formed by attaching a second beam to a beam like that shown in the Pagett patent, can the two beams

be made to diverge equally from the line of direction or draft unless they are united at the front end?

A. Certainly, by bending the rear portion of the main beam to the proper angle corresponding with the secondary one attached upon the opposite side.

X Q. 40. My question limited you to a beam of the same shape as that shown in the Pagett drawing and described in the Pagett patent, which is not bent in the least. Confining yourself to such a beam, please answer my question.

A. That would be necessary, and the second beam would have to be substantially as long as the other or its duplicate.

X Q. 40½. By the words "that would be necessary," you mean it would be necessary to attach it to the front end, do you?

A. Yes.

Defendant's counsel here offers in evidence the explanatory circular referred to in cross-examination of this witness, and marks the same Defendants' Exhibit Explanatory Circular.

Redirect by WELLS W. LEGETT, of counsel for complainant:

164 Q. 41. Referring to your last interrogatory, do you regard the Pagett patent as open to any such construction as is contemplated in the question?

(Objected to as incompetent, the witness not being an expert as to the construction of documents, which is alone a question for the court.)

Complainants' counsel replies that the witness professes to be an expert in patent causes and in the construction of language in its application to mechanical devices.

Defendants' counsel states that he will recognize no such thing as an expert to explain the construction of ordinary language, and that the question does not call attention of the witness to any specific technical term which he is to assist the court in applying or interpreting.

A. I do not: and the language and drawings would not have suggested any such thing to my mind.

Q. 42. From what point should the beams diverge in order that the metal composing the beams should be bent or twisted as little as possible?

A. From the extreme forward end of them.

X Q. 43. Please examine the Exhibit Slemmons Original Patent Model, and state what part you regard as the front end of the beams. Is it that point through which the bolt passes, or is it the end of the clevis ring?

A. I consider the end of the beams to be the socket through which the bolt passes that holds the clevis.

Q. 44. If, instead of such clevis ring, as shown on that model, a clevis hook had been employed, as in the Avery plow, what would you then regard as the front end of the beams, the extreme end of the hook, or the point where the metal is first begun to be drawn out into the form of a hook?

165 A. In my opinion, I should consider the end of the beams, or the structure into which they are merged, would be the extreme end, or the most forward part of the hook.

Q. 45. But suppose you still maintain the distinction between the front ends of the beams and the clevis, where in that event would the beams end and the clevis begin?

A. At the base of the hooks.

Q. 46. Do you regard it as material in the Slemmons patent that it

shall be limited to any particular kind of clevis device—that is, do you regard it as essential that it should have a ring rather than a hook?

(Objected to as not in redirect examination.)

A. I do not, because it states in the language of the patent that any suitable device may be employed whereby the plow may be connected with the draft.

Recross-examination by R. H. PARKINSON, of counsel for defendants:

X Q. 47. Would a double-shovel plow having these beams with curved standards merged into any one of the several devices shown by the drawings between the second and third claims in "Defendants' Exhibit Explanatory Circular" embody, in your opinion, the invention claimed in the second claim of the patent sued upon?

A. It would; they simply show different forms of producing similar results.

X Q. 48. My question was whether each of these devices would embody the invention claimed in the second claim of the patent sued upon?

A. They would, in the different forms of applying it.

(Signed) ISAAC V. HOLMES.

166 *Notary's certificate.*

United States circuit court, district of Kentucky.

I, Francis Toumey, a notary public of the State of Ohio, hereby certify that the above-named Isaac V. Holmes, the witness whose name is subscribed to the foregoing deposition, was by me first duly sworn to tell the truth, the whole truth, and nothing but the truth in the case aforesaid, and that the deposition by him subscribed was reduced to writing, and that it was subscribed by the witness in my presence, and that the same was taken, as hereinbefore specified, at the office of M. D. Leggett & Co., at Cleveland, Ohio.

In testimony whereof, I have hereunto set my hand and official seal this 4th day of December, 1876.

FRANCIS TOUMEY,
Notary Public.

167 United States circuit court, district of Kentucky. In equity.

WELLS W. LEGGETT ET AL.
vs.
B. F. AVERY & SON ET AL. } 3016.

Deposition on behalf of complainants taken before Philip F. Larner, a United States commissioner for the District of Columbia, at the office of the commissioner, No. 639 F street northwest, Washington, D. C.

Met at 10.35 a. m.

Present, Mr. H. A. Seymour for complainants, and Mr. Parkinson for defendants.

Counsel for complainants offers in evidence a certified copy of the file wrapper in the rejected application of W. F. Pagett (B), and the same is marked Complainants' Exhibit File Wrapper Pagett rejected application.

(Objected to as irrelevant and incompetent.)

Also offers in evidence a certified copy of the file-wrapper of patent granted W. F. Pagett, dated January 22nd, 1852, No. 8842, improvement in shovel plows (A), and the same is marked Complainants' Exhibit Pagett's Patent File-Wrapper.

Deposition of George W. Bryan.

GEORGE W. BRYAN, a witness of lawful age, having been duly
168 sworn on behalf of the complainants, doth depose and say in answer to interrogatories propounded by Mr. SEYMOUR:

Q. 1. Please state your age, residence, and occupation.

A. Age, seventy-three; residence, permanently in Harrison County, Ohio, at present residing temporarily in Washington, D. C.; occupation at present, not anything.

Q. 2. How long have you resided in Washington?

A. I came here in the fall of 1863, and remained here until January of 1866, employed in the Second Auditor's Office. I then returned to Harrison County, Ohio, my proper residence, and remained there until about December 20th, 1871, when I came here, and have been here ever since.

Q. 3. Where did you reside prior to 1863?

A. In the town of Cadiz, Harrison County, Ohio, county seat; came there in 1837.

Q. 4. Did you reside in Cadiz, Ohio, continually from 1837 to 1863?

A. I went two miles and a half out in the country in the spring of 1841, and remained there until I had constructed two large brick buildings for a couple of brothers named Matthew and Joseph Clark.. I returned then to Cadiz, and was only absent therefrom for a year once about the year 1854; with that exception I was in Cadiz all the time until I left in 1863.

Q. 5. What business, if any, did you carry on while in Cadiz?

A. Carpenter and joiner's work—constructing buildings.

Q. 6. Were you, while living in Cadiz, acquainted with Mathew G. Slemmons and Elizah Laizure, residents of that place?

A. Yes. Did building for both of them.

169 Q. 7. Did you meet these parties quite often, or only occasionally?

A. At one time, while employed by Mathew Slemmons, I saw him every day, and other times I would see him once a week, and sometimes two or three times a week, and sometimes oftener.

Q. 8. You state that you were employed by Mathew G. Slemmons. Now please state the character of your employment for him.

A. In the first place I built a coachmaker's shop in the rear of his smith shop, and subsequently I put up a dwelling for him.

Q. 9. Did you ever have occasion to transact any other kind of business for Mr. Slemmons?

A. Yes, I believe I remodeled and repaired his smith shop. I think among the last things I did for him I made a perspective drawing of a model on paper for him.

Q. 10. I now hand you a drawing designated as Complainant's Exhibit Slemmons' Drawing, Reissued Patent No. 6131, dated Nov. 10, 1874 (and the same is offered in evidence by Mr. Seymour). Please state whether or not the drawings represent the model from which you originally made a drawing for Mr. Slemmons.

A. It represents it exactly. Figure 1 is a fac simile of the drawing I made.

Q. 11. Where were you when you made this drawing?

A. In my own house—my own sitting room in Cadiz.

Q. 12. Who brought the iron model spoken of to your house for such purpose?

A. Mathew Slemmons.

170 Q. 13. Do you recollect whether or not he had it concealed from view, or brought it openly without cover?

A. To the best of my recollection he brought it into my house openly, in his hand uncovered, and I think that is the way of it.

Q. 14. About how far from your house did Mathew Slemmons reside?

A. About $\frac{3}{5}$ of a mile. The smith-shop was not over three squares.

Q. 15. When Mr. Slemmons brought this model to your house and requested you to make a drawing of the same, what did he, in his conversation, lead you to suppose that this was his invention or the invention of some other party, or a joint invention of his with some other party?

(Objected to as incompetent, by Mr. Parkinson.)

A. Well, his remarks were in regard to the performance of this work he wanted me to do, and not with relation to the authorship of the thing. He came to me, from the best of my recollection, and asked me if I could transfer that model on to paper; that he had applied to B. Phillips, an expert in our town, to make this drawing, but he couldn't do it. He made him a fancy sketch, which was not satisfactory. He then came to me, having heard that I could make such drawings. I told him I could do it; so he left it and went away without any further remarks that I now recollect.

Q. 16. Did he state for what purpose he wanted this drawing made?

A. I think he did. I think he said the Patent Office required a representation of that kind.

Q. 17. Did Mr. Slemmons state that he was going to apply for a patent on this invention?

171 (Objected to as as incompetent.)

A. He gave me to understand to that effect, but I do not remember the words.

Q. 18. Who did you understand, from his conversation, was the inventor of the improvement in plows represented in the model, and who intended to apply for a patent for the same?

(Objected to as incompetent.)

A. I understood that he was going to apply for a patent himself.

Q. 19. Did he at that time state that any other party was in any way interested in the invention?

(Objected to as incompetent.)

A. No, sir.

Q. 20. You state that you were acquainted with Elijah Laizure; did he carry on business at that place?

A. Yes, sir; his shop was near my house.

Q. 21. About how far from your house was Mr. Laizure's shop?

A. It was less than two hundred feet.

Q. 22. Did you often see Mr. Laizure and converse with him?

A. Yes; sometimes every day, and conversed with him. He was a very corpulent man, and would sit outside of his shop, where I would meet and converse with him.

Q. 23. About the time that you made the drawing referred to, do you know whether Mr. Laizure was possessed of much property or not?

A. Yes; I knew about what he was worth in realty, and he also had a bank account. He occupied a two-story brick house belonging to him, owned a shop also, and the ground it stood on, and he had deposits in bank.

172 Q. 24. Please state now the general impression in the community as to the authorship of this invention.

(Objected to because the witness has not been shown to have had any peculiar oportunities in ascertaining the general impression.)

Counsel for complainants replies that the almost uninterrupted residence of the witness in this community for a period of twenty-six years, and the character of his occupation being such that he is obliged to constantly associate himself with members of the community, must render him specially qualified concerning the impressions of the community where he lived concerning the authorship of the notoriously valuable and important improvement in question.

Counsel for defendants refers to the record for the grounds of his objection, and reserves the argument of the case to the proper time.

A. I always heard it called Slemmons' patent, and I never heard it called anything else; that is, by the community.

Cross-examined by Mr. PARKINSON for defendants:

X Q. 25. How large was this model brought you by Mr. Slemmons?

A. I think the whole length from point of beam to end of model was about a foot.

X Q. 26. When was it brought to you?

A. I am not able to arrive at the year exactly. I discharged it from my attention after the thing was done. I could fetch it up pretty closely if I was permitted to think of it and connect certain circumstances. It might be about fifteen or sixteen years ago.

X Q. 27. Had you ever seen a similar plow prior to that time?

173 A. Yes; I saw the plows in process of manufacturing in Slemmons' shop, both before and after that time. I am not certain about how long before, but about that time I saw plows being made.

X Q. 28. Was anything ever said to you by any person about Mr. Slemmons not being the original inventor of that plow?

A. One time, up town, in a casual conversation with Laizure, I happened to mention the circumstance of my drawing off a representation of a plow for Slemmons. Laizure said he had a claim in that plow himself, and said he was going to look after it. That was all I ever heard pro or con from any person. That was all I thought about it. I thought it was simply one of Laizure's boasting remarks, as he was a blacksmith who was very proud of his work.

X Q. 29. How many years did you and Mr. Laizure live as near each other as you have stated in your direct examination?

A. At one period of the time I lived nearer his residence, but not nearer to his shop. I lived there from 1847 to 1871, except residing in Washington from 1863 to 1868. He lived there in the same place all the time, and does yet.

Redirect by Mr. SEYMOUR:

Q. 30. Did you ever hear that Mr. Laizure took any active steps whatever to assert his rights to his so-called claim in this invention?

(Objected to as incompetent.)

A. If he did I never knew it; I never heard of it.

(Signed) G. W. BRYAN.

174 Sworn to and subscribed before me this 7th day of December, A. D. 1876.

(Signed) PHILIP F. LARNER,
U. S. Commissioner, D. C.

175 *Complainant's Exhibit. Slemmons' Original Patent.*

The U. S. Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted Mathew G. Slemmons, dated October 9th, 1860, No. 30357, for improvement in ploughs.

In testimony whereof I, Ellis Spear, acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto fixed this fifteenth day of March, in the year of our Lord one thousand eight hundred and seventy six, and of the Independence of the United States the one hundredth.

[L. S.] ELLIS SPEAR.
Acting Commissioner.

The United States of America to all to whom these letters patent shall come:

Whereas, Mathew G. Slemmons, of Cadiz, Ohio, has alleged that he has invented a new and useful improvement in ploughs, which he
176 states has not been known or used before his application, has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement and praying that a patent may be granted for that purpose.

These are therefore to grant, according to law, to the said Mathew G. Slemmons, his heirs, administrators, or assigns, for the term of fourteen years from the ninth day of October, one thousand eight hundred and sixty, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Mathew G. Slemmons in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand at the city of Washington, this ninth day of October, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States of America the eighty-fifth.

[L. S.] JACOB THOMPSON,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

PHILIP F. THOMAS,
Commissioner of Patents.

(Here follows diagram marked page 176.

177 The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that Mathew G. Slemmons, of Cadiz, in the county of Harrison and State of Ohio, have invented a new and useful improve-

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Avery
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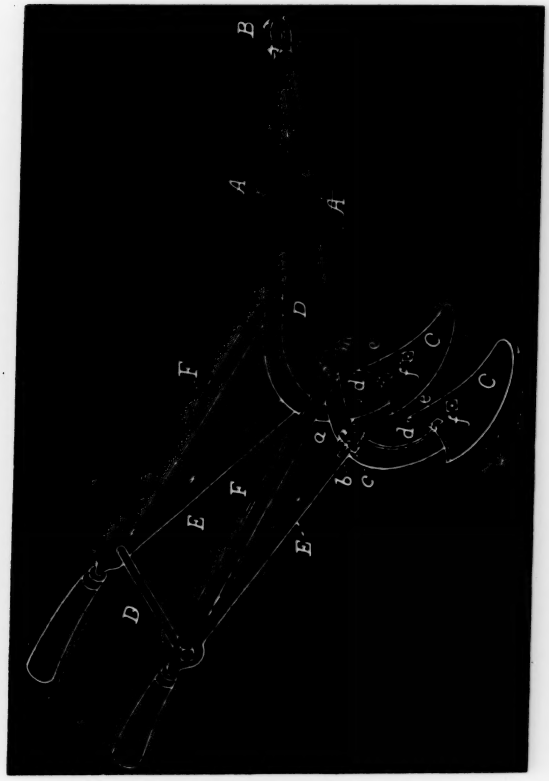

ment in double shovel plows; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawing, forming a part of this specification, in which—

A perspective view of my double shovel plow is represented.

My invention consists in the particular arrangement of the several parts in the manner and for the purpose hereinafter described.

To enable others skilled in the art to make and use my invention, I will proceed to describe its construction and operation.

A A represent two iron beams which are united at their front ends by means of the pin which retains the clevis B, and spread apart at their rear ends. Each of these beams terminates in a curve standard, so as to support shovels *c*, *c*, as represented. D is a transverse bar for bracing the beams laterally. The ends of this bar are made round, pass through the beams, and extend some distance beyond the outside face of the same. E, E, are forked iron handles, braced at the top by a transverse bar, D. The lower prong E of each of these handles attaches to the side of the beams by means of loops *a*, slots *b*, and set-screws or pins C, while the upper prong F attaches to the round end, *m*, *m*, of the brace D, so as to turn loosely on the same. It will be observed
178 that the slots allow the handles to be raised and lowered to suit the height of different plowmen, and that the round ends, *m*, *m*, of the brace serves as the axis for the handles to turn upon while being adjusted.

The shovels *c*, *c*, are attached to the curved standard of the beams by means of a shoulder, *d*, a notch, *e*, screw-bolt, *f*, and a mortice, *g*, as represented.

My plough is very light, and *and* yet very durable; it also is capable of being made of any width desired, as the light iron beams can be sprung apart more or less, and the transverse bar be inserted at a point nearer to or farther from the clevis. The forked handles also, by being light, can be spread apart more or less, accordingly as the beams are spread apart, and the position of the transverse bar is changed.

I do not claim any one part of the plough, nor the operation of any one part of the same, but

What I do claim as my invention, and secure by letters patent, is

The arrangement of the two curved shoulder-beams A, A, a clevis, B, transverse bar, D, *m*, slotted adjustable forked handles E, E, *b*, and notched and mortised shovels *C*, *C*, *e*, in the manner and for the purpose described.

MATHEW G. SLEMMONS.

Witness:
LANCELOT HEARN.
CHAS. PATTERSON.

179 *Complainant's exhibit Slemmons' First Reissue.*

The U. S. Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the reissue letters patent granted Mathew G. Slemmons, dated June 22d, 1869, No. 3514, for improvement in plows.

In testimony whereof I, Ellis Spear, acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this fourteenth day of March, in the year of our Lord one thousand eight

hundred and seventy-six, and of the Independence of the United States the one hundredth.

[L. S.]

ELLIS SPEAR,
Acting Commissioner.

No. 3514. Reissue.

The United States of America to all to whom these letterss patents may come, greeting:

Whereas Mathew G. Slemmons, of Cadiz, Ohio, has alleged that he has invented a new and useful improvement in plows (for which letters patent were issued to him dated October 9th, 1860; which letters having been surrendered by him, the same have been cancelled,
180 and new letters ordered to issue to him on an amended specification), and has made oath that he is a citizen of the United States; that he verily believes he is the original and first inventor or discoverer of the said improvement, and that the same hath not to his knowledge and belief been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor.

These are therefore to grant to the said Mathew G. Slemmons, his executors, administrators, or assigns, for the term of fourteen years from the ninth day of October, one thousand eight hundred and sixty, the full and exclusive right and liberty of making, using, and vending to others to be used, the said improvement, a description whereof is given in the annexed schedule, and made a part of these presents.

In testimony whereof I have caused these letters to be made patent and the seal of the Patent Office to be hereunto affixed.

Given under my hand at the city of Washington this twenty-second day of June, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-third.

[L. S.[

W. T. OTTO,
Acting Secretary of the Interior.

Countersigned, and sealed with the seal of the Patent Office.

SAM'L S. FISHER,
Commissioner of Patents.

181 UNITED STATES PATENT OFFICE.

Mathew G. Slemmons, of Cadiz, Ohio.—Improvement in plows.

Specification forming part of letters patent No. 30357, dated October 9, 1860; reissue No. 3514, dated June 22, 1869.

To all whom it may concern:

Be it known that I, Mathew G. Slemmons, of Cadiz, in the county of Harrison and State of Ohio, have invented a new and improved double shovel plow; and I do hereby declare that the following is a more full, clear, and exact description thereof, reference being had to the accompanying drawings, making a part of this specification, in which—

Figure 1 is a perspective view of the improved plow; Fig. 2 is a side elevation of the plow; and Fig. 3 is a plan or top view of the same.

Similar letters of reference indicate corresponding parts in the several figures.

One object of this invention is to construct a double-shovel plow whose shovels are secured to standards that are formed upon, and that form a part of their respective beams, which latter converge toward their front ends, and have a clevis so attached to these ends that the draft of the team will act equally upon both plows, as will be hereinafter explained. And another object is to brace handles which are
182 applied to converging plow-beams in such a manner that a rigid attachment of each handle is effected in a very simple and substantial manner. Another object is to unite the front ends of the plow-beams in such a manner that the draft ring or clevis by which the plow is drawn will pull equally upon said ends, as will be hereinafter explained.

To enable others skilled in the art to understand my invention, I will explain its construction and operation.

In the accompanying drawings, A A represent the metal plow-beams, which are connected together so as to converge toward their front ends, at which points these beams are suitably connected and provided with a clevis, B, which may be pivoted to a transverse pin, *g*, as shown in the drawings, or which may be applied in any other suitable manner, whereby a strong hitching attachment of the team can be made to the beams. By thus bringing the two beams A A together, it will be seen that the draft upon the clevis B will operate uniformly upon both of them in drawing the machine along. Each one of these beams A terminates at its rear end in a standard, A′, which is formed by bending the metal substantially in the manner shown in Figs. 1 and 2, so that each beam and its standard or depressed end A′ will be formed of one piece of metal, or the same piece of metal, thereby affording great strength, and admitting of the parts being made much stronger and with greater facility than if each beam and standard were made of separate pieces, and then secured together by bolts, rivets, or otherwise.

It is obvious that the curved form of the standards will be much stronger than an abrupt or angular shoulder, as the strain in the former instance is uniformly distributed, while in the latter instance the
183 strain would be chiefly confined to the knee or angular shoulder.

The invention is not, however, confined to the exact form or curve given to the standards shown in the drawings. The shovels *c c*, which may be made of any suitable form, are preferably secured to the standards by shoulder abutments *d d*, formed on the front edges of these standards by bolts *f*, the heads of which are countersunk into the shovels *c c*, and by recesses *e e*, which are formed in the top edges of the shovels, as shown in Fig. 1. The shoulders *d d* assist in preventing lateral as well as upward displacement of the shovels, and relieve the bolts *f f* of considerable strain. One of the beams A is somewhat shorter than the other, so that one shovel, *c*, will be properly in advance of the other; and the two beams A A are connected together near their rear terminal by a transverse bar or tie-brace, D′, which has its ends reduced and passed through the beams, and also through the front ends of handles F F, and upon these ends nuts are screwed so as to hold the parts together. The bar D′ not only braces the beams and standards against outward strain, but it holds them against lateral compression. If desirable provision may be *may be* made for adjusting the bar D nearer to or farther from the clevis B, for the purpose of expanding or contracting the beams and their shovel standards, more or less, as may be required.

The beams A A will spring at and near their front ends sufficiently to allow of said adjustments. The plow-handles F F are attached to the beams A A at *m m*, and secured rigidly in place at any desired angle by means of rear supports and braces E E, which are attached to the beams or to the upper portions of the standards A′ A′, in rear of
184 the handle connections. The drawings represent each handle and its support and brace made of one piece of metal, by splitting a bar of metal in the form of a fork, one prong of which forms a handle, and the other the support and brace; but I do not confine myself to this mode of manufacturing the handles and their brace-supports. The tangs which are formed on the upper termini of the handles receive the wooden holders T T, as shown in the drawings. The transverse bar D keeps the handles and their supporting-braces at the required distance apart.

If it is desirable to provide for adjusting and setting the handles F F at different angles with respect to the plow-beams A A, to suit different plowmen, this may be done by pivoting the front ends of the handles to the ends of bar D′, and connecting the lower ends of the supporting-braces E E to the beams or standards by means of straps *a* and bolts or screws *e′*, which latter pass through oblong slots *b*, made through said braces E E, substantially as shown in the drawings, Fig. 1 and 2. By loosening the screw *e′* the handles can be adjusted as above stated.

Having described my invention, what I claim as new, and desire to secure by letters patent, is—

1. The two converging beams A A, each one of which has a shovel-standard, A′, formed by bending its rear end, substantially as described.

2. The converging beams A A, connected together and constructed with curved shovel-standards A′ A′ upon them, substantially as described.

3. The union of the front ends of plow-beams, which have their rear ends bent to form shovel-standards, by means of a clevis or device by which the team is hitched to the implement, substantially as described.

185 4. The converging plow-beams A A, having shovel standards A′ A′ formed on them, in combination with handles F F and handle-supporting braces E E, substantially as described.

5. In combination with the foregoing, the manner, substantially as described, of adjusting the handles F F and securing them to the beams at any desired angle.

6. Constructing of one piece of metal a plow-beam, A, and a curved shovel-standard A′, with a shoulder *d* formed on the latter, substantially as described.

MATHEW G. SLEMMONS.

Witnesses:
W. C. GASTON.
JOHN WILLIAMS.

186 *Complainants' exhibit. Reissue.*

The U. S. Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the reissue letters patent granted Leggett and Leggett, dated November 10th, 1874, No. 6131, for improvement in plows.

In testimony whereof I, Ellis Spear, acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this fourteenth day of March, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundredth.

[L. S.]

ELLIS SPEAR,
Acting Commissioner.

No. 6131. Reissue.

The United States of America to all whom these presents shall come:

Whereas Mathew G. Slemmons, of Iowa City, Iowa, assignor to Leggett & Leggett, has presented to the Commissioner of Patents a
187 petition praying for the reissue of letters patent for an alleged new and useful improvement in plows (for which letters patent were issued to him, dated October 9th, 1860, the same surrendered and new letters issued to him, dated June 22d, 1869, and extended seven years from October 9th, 1874, which last letters having been surrendered the same have been cancelled and new letters ordered to issue to said assignees on an amended specification), a description of which invention is contained in the specification of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said Leggett & Leggett, their heirs or assigns, for the term of twenty-one years from the ninth day of October, one thousand eight hundred and sixty, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington this tenth day of November, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States of America the ninety-ninth.

[L. S.]

B. R. COWEN,
Acting Secretary of the Interior.

Countersigned:
J. M. THACHER,
Acting Commissioner of Patents.

188 UNITED STATES PATENT OFFICE.

Mathew G. Slemmons, of Iowa City, Iowa, assignor to Leggett & Leggett. Improvement in plows.

Specification forming part of letters patent No. 30357, dated October 9, 1860; reissue No. 3514, dated June 22, 1869; extended seven years; reissue No. 6131, dated November 10, 1874; application filed October 12, 1874.

To all whom it may concern:

Be it known that I, Mathew G. Slemmons, formerly of Cadiz, Ohio, now of Iowa City, county of Johnson, State of Iowa, have invented a new and improved double-shovel plow; and I do hereby declare that the following is a full, clear, and exact description thereof, such as will enable

others skilled in the art to which my invention pertains to make and use it, reference being had to the accompanying drawings making a part of this specification, in which—

Figure 1 is a perspective view of the improved plow, Fig. 2 is a side elevation of the plow, and Fig. 3 is a plan or top view of the same.

Similar letters of reference indicate corresponding parts in the several figures.

One object of this invention is to construct a double-shovel plow whose shovels are secured to standards that are formed upon, and that form a part of, their respective beams, which latter converge towards their front ends, and have a clevis so attached to these ends that the
189 draft of the team will act equally upon both beams, as will be hereinafter explained; and another object is to brace handles, which are applied to converging plow-beams in such a manner that a rigid attachment of each handle is effected in a very simple and substantial manner. Another object is to unite the front ends of the plow-beams in such a manner that the draft-ring or clevis, by which the plow is drawn, will pull equally upon said ends, as will be hereinafter explained.

To enable others to make, understand, and use my invention I will explain its construction and operation.

In the accompanying drawings, A A represent the metal plow-beams, which are connected together so as to converge toward their front ends, at which point these beams are suitably connected rigidly together, and provided with a clevis, B, which may be pivoted to a transverse pin, *g*, as shown in the drawings, or which may be applied in any other suitable manner; or any other suitable clevis device may be employed, whereby the plow may be connected with the draft, and whereby a strong hitching attachment is effected. By thus bringing the two beams A A together, it will be seen that the draft upon a clevis at B will operate uniformly upon both of them in drawing the plow along. Each one of the beams A A terminates at its rear end in a standard, A′, which is formed by bending the metal substantially in the manner shown in Figs. 1 and 2, so that each beam and its standard or depressed end A′ will be formed of one piece of metal, or of the same piece of metal, thereby affording great strength, and admitting of the parts being made much stronger and with greater facility than if each beam and its standard were made of separate pieces, and then secured together by bolts, rivets, or otherwise.

190 It is obvious that the curved form of the standards will be much stronger than an abrupt or angular shoulder, as the strain in the former instance is uniformly distributed, while in the latter instance the strain would be chiefly confined to the knee or angular shoulder. The invention is not, however, confined to the exact form of curve given to the standards shown in the drawings.

The shovels *c c*, which may be made of any suitable form, are preferably secured to the standards by shoulder abutments *d d*, formed on the front edges of these standards by bolts *f f*, the heads of which are countersunk into the shovels *c c*, and by recesses *e e*, which are formed in the top edges of the shovels, as shown in Fig. 1. The shoulders *d d* assist in preventing lateral, as well as upward, displacement of the shovels, and relieve the bolts *f f* from considerable strain. One of the beams A is somewhat shorter than the other, so that one shovel, *c*, will be properly in advance of the other, and the two beams A A are connected together near their rear termini by a transverse bar or tie-brace D′, which has its ends reduced and passed through the beams,

and also through the front ends of the handles F F, and upon these ends nuts are screwed, so as to hold the parts together. This bar D′ not only braces the beams and standards against outward strains, but it also holds them against lateral compression.

If desirable, provision may be made for adjusting the bar D nearer to or farther from the clevis B, for the purpose of expanding or contracting the beams and their shovel-standards more or less, as may be required. The beams A A will spring at and near their front ends sufficiently to allow of said adjustment.

The plow handles F F are attached to the beams A A at
191 *m m*, and secured rigidly in place at any desired angle by means of rear supports and braces E E, which are attached to the beams, or to the upper portions of the standards A′A′, in rear of the handle-connections.

The drawings represent each handle and its support and brace made of one piece of metal by splitting a bar of metal in the form of a fork, one prong of which forms a handle and the other the support and brace; but I do not confine myself to this mode of manufacturing the handle and their brace supports.

The tangs which are formed on the upper termini of the handles, receive the wooden holder T T, as shown in the drawings. The transverse bar D keeps the handles and their supporting braces at the required distance apart. If it is desirable to provide for adjusting and setting the handles F F at different angles with respect to the plow-beams A A, to suit different plowmen, it may be done by pivoting the front ends of the handles to the ends of bar D′, and connecting the lower ends of the supporting braces E E to the beams or standards by means of straps *a* and bolts or screws *e′*, which latter pass through oblong slots *b*, made through said braces E E, substantially as shown in the drawings, Figs. 1 and 2. By loosening the screws *e′*, the handles can be adjusted, as above stated, and it is evident that the straps *a* may be dispensed with if desired.

Having described *by* invention, what I claim as new, and desire to secure by letters patent, is—

1. Two diverging beams, A A, that have their rear ends bent to form shovel-standards, the said beams being fastened rigidly together, substantially as described, at and springing from the point of attachment for the draft.

192 2. Two diverging beams, A A, that have their rear ends bent to form shovel-standards, and their front ends fastened rigidly together and merged into a device, substantially as described, whereby the plow may be attached to the draft.

3. The combination, substantially as described, with the two plow-beams A A, of the handles F F and adjustable handle-supporting braces E E.

MATHEW G. SLEMMONS.

Witnesses:
P. RANSOM.
ALBERT SHEPARD.

193 *Complainant's exhibit.—Assignments, etc.*

The United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of

this office of all assignments on records under letters patent No. 30357 and reissue letters patent Nos. 3514 and 6131.

In testimony whereof, I, Ellis Spear, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this sixteenth day of March, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundredth.

[L. S.] ELLIS SPEAR,
Acting Commissioner.

To all to whom these letters patent may come:

Whereas I, M. G. Slemmons, of Cadiz, Harrison County, State of Ohio, did on the 9th day of October, A. D. one thousand eight hundred and sixty, obtain letters patent from the Commissioner of Patents of the United States, for the invention and construction of valuable improvements in iron double-shovel plow, reissued June 22nd, one thousand eight hundred and sixty-five, vesting in me the sole right to
194 manufacture, sell and use said plow, and sell and convey the same to others, by deed of assignment in accordance with the laws of the United States:

Therefore, be it known, that for and in consideration of the sum of one thousand dollars paid to me, I hereby grant, bargain, sell, convey and assign all my right, title, interest and claim vested in me by said letters patent and reissue No. 3514, unto William P. Brown, of Malta, Morgan County, State of Ohio, his heirs or assigns, all that territory or tract of country known as the States of Alabama, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Kansas, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Vermont, Virginia, West Virginia, Wisconsin, Nebraska, Tennessee, excepting the district in Davidson County, including Nashville, also the unsold territory in the States of Illinois, Missouri, Iowa, Pennsylvania and Indiana, and all the territories in the United States; and I hereby authorize William P. Brown or his heirs to enter upon, to manufacture, sell and use said plows exclusively in said territory, and the right to sell and assign any portion thereof to others, excepting and reserving any territory that may be sold and not herein mentioned, for the full term of fourteen years from the date of said patent.

In witness whereof I have hereunto set my hand and seal this 29th day of October, A. D. 1869.

[L. S.] MATTHEW G. SLEMMONS. [L. S.]

Attest:

ALEX. WALDRON.
J. W. SLEMMONS.

Recorded November 13, 1869.

195 To all to whom these letters patent may come:

Whereas I, M. J. Slemmons, of Cadiz, Harrison County, State of Ohio, did on the 9th day of October, A. D. one thousand eight hundred and sixty, obtain letters patent from the Commissioner of Patents of the United States, for the invention and construction of valuable improvements in iron double-shovel plow, reissued June 22nd, one thousand eight hundred and sixty-nine, vesting in me the sole right to manufacture, sell and use said plow, and sell and convey the same to others, by deed of assignment in accordance with the laws of the United States;

Therefore, be it known, that for and in consideration of the sum of one thousand dollars paid to me, I hereby grant, bargain, sell, convey, and assign all my right, title, interest and claim vested in me by said letters patent, and reissue No. 3514, the firm of Andrew & Co., of Pella, Marion County, State of Iowa, their heirs or assigns, all that territory or tract of country known as the State of Iowa, and I hereby authorize them or their heirs to enter upon, to manufacture, sell, and use said plows exclusively in said territory, and the right to sell and assign any portion thereof to others, with all the rights of the reissue to any person or persons who may or have purchased the right of the said Andrew & Co., excepting the counties of Scott, Clinton, Cedar & Johnson in the State of Iowa, for the full term of fourteen years from the date of said patent.

In witness whereof I have hereunto set my hand and seal this the 1st day of November, A. D. 1869.

MATHEW G. SLEMMONS, [L. S.]
By W. P. BROWN, *Agent* [L. S.]

Attest:
H. V. HUNT.
S. HARDESTY.

Recorded November 25, 1869.

196 (8700.)

To all to whom these letters patent may come:

Whereas M. G. Slemmons, of Cadiz, Harrison County, State of Ohio, did on the 9th day of October, A. D. one thousand eight hundred and sixty, obtain letters patent from the Commissioner of Patents of the United States, for the invention and construction of valuable improvements in iron double-shovel plow, reissued June 22nd, A. D. 1869, vesting in me the sole right to manufacture, sell and use said plow, and sell and convey the same to others, by deed of assignment in accordance with the laws of the United States; and

Whereas I, W. P. Brown, of the State of Ohio, is now the sole and exclusive owner of said patent in the territory hereinafter named and not excepted. Therefore, be it known, that for and in consideration of seven hundred dollars, paid to me, I hereby grant, bargain, sell, convey and assign, all my right, title, interest and claim, vested in me by said letters patent, unto Viers & Taylor, of Logan County, State of Kentucky, his heirs or assigns, all that territory or tract of country known as the State of Tennessee, and I hereby authorize them or legal representatives to enter upon, to manufacture, sell and use said plows, exclusively in said territory, and the right to sell and assign any portion thereof to others, excepting and reserving district No. 1, in Davidson County, including the city of Nashville, in the State of Tennessee, for the full term of fourteen years from the date of said patent.

In witness whereof, I have hereunto set my hand and seal this 13th day of December, A. D. 1869.

W. P. BROWN, [L. S.]
[L. S.] By , *Agent.*

Attest:
S. E. DICKEY.

Recorded February 3d, 1870.

197 To all to whom these letters patent may come:

Whereas M. G. Slemmons, of Cadiz, Harrison County, State

of Ohio, did on the 9th day of October, A. D. one thousand eight hundred and sixty, obtain letters patent from the Commissioner of Patents of the United States for the invention and construction of valuable improvements in iron double-shovel plow, consisting in the arrangement of two curved beams, a cross bar, separating the beams, passing through and receiving the handles fastened by a screw nut; also the forked iron handles being adjustable by means of slot or bolt; also the notched or mortise shovels, vesting in me the sole right to manufacture, sell, and use said plow, and sell and convey the same to others by deed of assignment, in accordance with the laws of the United States; and

Whereas the said M. G. Slemmons, patentee aforesaid, did on the 6th day of July, A. D. 1864, for a valuable consideration, grant, bargain, sell, and assign all his right, title, interest, and claim vested in him by said letters patent unto John L. Andrew and James B. Sexton, doing business under the name and style of Andrew & Co., of the city of Pella, county of Marion, and State of Iowa, reissued June 22nd, one thousand eight hundred and sixty-nine: Now,

Therefore, be it known, that for and in consideration of the sum of four hundred dollars paid to us, we do hereby grant, bargain, sell, convey, and assign all our right, title, interest, and claim vested in us by said letters patent and deed of assignment unto John Morrison & Co., of Monroe, county of Jasper, State of Iowa, his heirs or assigns, all that territory or tract of country known as the counties of Jasper,
Poweshick, Tama, and Story and Marshall (with all the rights of
198 reissue), and we hereby authorize them or their heirs or assigns
to enter upon, manufacture, sell, and use of said plows exclusively in said territory, and the right to sell and assign any portion thereof to others, excepting and reserving none for the full term of fourteen years from the date of said patent.

In witness whereof we have hereunto set our hands this day of January, A. D. 1870

JAMES B. SETON. [L. S.]
JOHN L. ANDREW.

In presence of—
H. V. HUNT.
S. HARDESTY.

Recorded February 7th, 1870.

To all to whom these letters patent may come:

Whereas M. G. Slemmons, of Cadiz, Harrison County, State of Ohio, did on the 9th day of October, A. D. one thousand eight hundred and sixty, obtain letters patent from the Commissioner of Patents of the United States for the invention and construction of valuable improvements in iron double-shovel plow, vesting in him the sole right to manufacture, sell, and use said plow, and sell and convey the same to others by deed of assignment, in accordance with the laws of the United States; and

Whereas the said M. G. Slemmons, by his deed dated the 1st day of April, A. D. 1864, sold, conveyed, and assigned to Alexander Wells all his right, title, interest and claim vested in him by said letters of patent to the territory or tract of country known as the counties of Rock Island and Whiteside, Illinois, and the counties of Clinton and Scott, Iowa,
amongst others, and thereby authorized said Wells to enter upon,
199 manufacture, sell, and use said plows exclusively in said territory,
and thereby granted to said Wells the right to sell and assign

any portion thereof to others; and whereas the said Wells did sell, convey, and assign all his right, title, interest, and claim vested in him by letters patent to Jas. W. McPherson, of Lyons, in the county of Clinton, Iowa, his heirs and assigns, the said territory, to wit, the counties of Rock Island, Whiteside, Illinois, and the counties of Clinton and Scott, Iowa; and whereas the said Jas. W. McPherson did assign all his right, title, and interest in and to said territory under said letters patent to Candee, Swan & Co., of Moline, in the county of Rock Island, and State of Illinois:

Therefore, be it known, that in consideration of certain agreements made by and between the Moline Plow Company, of even date herewith, wherein said Brown agrees for a certain sum specified and agreed upon as a royalty fee between the said parties to allow the said company to manufacture, sell, and use said invention in certain territory therein specified, the said Candee, Swan & Co. hereby grant, bargain, sell, convey, and assign all their right, title, interest, and claim vested in them by said letters patent and assignments thereunder, unto the said W. P. Brown, of Malta, county of Morgan, State of Ohio, his heirs or assigns, in all that territory or tract of country known as the counties of Rock Island, Whiteside, Clinton, and Scott aforesaid. I hereby authorize W. P. Brown, or heirs and assigns, and they to enter upon, to manufacture, sell, and use said plows exclusively in said territory, and the right to sell and assign any portion thereof to others, and also all rights that they may or can have under any reissue of said patent for the full term of fourteen years from the date of said patent.

200 In witness whereof they have hereunto set their hands and seals this eleventh day of November, A. D. 1869.

H. W. CANDEE,
R. K. SWAN, [SEAL.]
By A. FRIBERG, *Agent.*
GEO. STEPHENS.

Recorded February 14th, 1870.

This article of agreement, made and entered into this 11th day of November, A. D. 1869, by and between William P. Brown, of Malta, Morgan County, State of Ohio, party of the first part, and Basil D. Buford, Charles Buford, and Louis Buford, partners, &c., under the name and style of B. D. Buford & Co., trading and doing business at Rock Island, Illinois, the Moline Plow Company Corporation, a firm whereof H. W. Candee, R. K. Swan, S. W. Wheelock, George Stephens, A. Friberg, John Good, are the sole partners, and Deer & Co., a corporation, both doing business, &c., in the town of Moline, Illinois, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the covenants and agreements hereinafter entered into on the part of the said party of the second part, have sold and leased, and by these presents doth sell, lease, and convey unto the said party of the second part and to their legal representatives the sole and exclusive right to manufacture, use, and sell iron beam double shovel plows under a patent granted by the United States to one Mathew G. Slemmons, of Cadiz, Harrison County, Ohio, dated October 9th, A. D. 1860, and reissued June 22d, A. D.

201 1869, and more particularly described in said reissue No. 3514 in the following named States and Territories, viz: Wisconsin (except the county of Columbia therein); Illinois (except the counties of Tazwell, Woodford, Peoria, Wabash and White); Minnesota, the counties of Scott, Clinton, Johnson, and Cedar; in the State of Iowa; Kansas;

Missouri (except the county of Mercer, Carroll, Livingston, Lynn, Daviess, Grundy, Caldwell, Clinton, Clay, Knox, and Lewis); Nebraska, California, and all other Territories of the United States, and the State of Oregon, for and during the term and entire time for which the said reissue of said patent was and is granted.

And the said party of the first part, for himself, his heirs, executors, and adminsitrators, doth hereby covenant to and with the said party of the second part, and every of them and their and each of their legal representatives, that he is now the sole owner of the said patent so reissued, and of the right to manufacture, use, and sell said plows thereunder, in the Territory aforesaid; that by these presents such right passes to the said party of the second part, free and clear of all other grants thereof or incumbrances therefor of what nature soever, and that he and they shall and will warrant and defend the said party of the second part, and their and each of their legal representatives, in the quiet enjoyment of the right hereby granted during the continuance of this agreement; that said party of the first part and his legal representatives shall and will, at his and their own proper charge and expense, use all legal means to suppress the manufacture, use, and sale of such plows in infringement of, or conflicting with the rights, sole and exclusive, hereby granted to said party of the second part, excepting, nevertheless, such manufactories thereof in a small way that do not ship or sell except at their
202 places of manufacture, and as to whom he or they shall not be required to proceed against by notice from at least two out of the three firms and corporations of the second part. It being the intention of said last above covenant to excuse said party of the first from prosecuting such small manufactories and manufacturers, unless thereto required by said two, the firms or corporations of the said party of the second part. It being further hereby agreed that any damages that shall be recovered by said party of the first, or his legal representatives, in any suits instituted by him or them to compel the non-manufacture of said plows by said unauthorized persons as aforesaid, shall be and belong to said party of the first part, or his legal representatives, but that in case of any such recovery by compromise, said party of the first is to retain one half, and the party of the second part the other half, in due proportion between them. And for and in consideration of the proper prior performance by the said party of the first part or his legal representatives of the covenants by him herein entered into, the said parties of the second part, viz, the said B. D. Buford & Co., the Moline Plow Co., and Deere & Co., each for itself and its several partners, and its and their legal representatives and assigns, hereby covenant to and with the said party of the first part, his executors and administrators, that for each and every of said shovel-plows, by them severally manufactured and sold, under and during the continuance of this agreement, that they will severally pay unto said party of the first part, his executors, administrators, or assigns, the sum of thirty (30) cents, and that said parties of the second part shall severally, on or about the first day of October, in each and every year hereafter during the continuance hereof, and at any sooner determination of this
203 agreement, make and secure to the said party of the first part, or his legal representatives, a statement of the number of such plows by them severally manufactured and sold, under and in pursuance of this agreement, and shall account with and pay to him or them the several amounts of royalty that shall be due to him or them from them severally to the dates of such statements therefor.

And the said several parties of the second part each for itself sever-

ally agrees to make all reasonable exertion to supply the demand of the market for said plows in the said territory granted, it being further understood by and between the parties hereto that any one or more of the parties of the second part, or their legal representatives, may at any time discontinue the manufacture of said plows hereunder, and that if they do so they shall have the privilege of selling and using such plows by them already manufactured, and that all their rights (with that exception, under or by virtue of this contract), shall thereupon cease and determine, as well as these liabilities thereunder.

It is further understood between the parties that if at any time it shall appear that said reissue of said patent is irregular or void, so that said party of the first part, or his legal representatives, could not protect themselves and inforce their pretended exclusive rights thereunder, that then this contract shall be void, and the several parties thereto stand in all respects as if the same never had been made.

It is understood that the said firm of B. D. Buford & Co. and said corporation the Moline Plow Co., and said Deere & Co., in and by said agreement, each binds itself and legal representatives severally, and that no one of them becomes in any degree liable for the doings or defaults of the others or either of them, the several partners of the
204 said firm of B. D. Buford & Co. joining simply as such firm. It being hereby agreed that no one or more of said parties of the second part shall transfer or assign unto any other persons, firm, or corporation than shall succeed to it or them, and carry on the said manufacture at the place or places by said original parties of the second part, and for that purpose or substantially so, any right to the manufacture of said plows derived hereunder, without the consent of the other party or parties of the second, in writing expressed.

In testimony whereof the said Basil D. Buford, Charles Buford, Louis Buford, H. W. Candee, R. K. Swan, Stillman W. Wheelock, George Stephens, A. Friberg, and John Good have hereunto and to a duplicate hereof set their hands and seals, and the said Deer & Co., to be signed by their president and secretary, the day and year above written.

WM. P. BROWN. [L. S.]
B. D. BUFORD. [L. S.]
CHAS. BUFORD. [L. S.]
LOUIS M. BUFORD. [L. S.]
H. W. CANDEE. [L. S.]
R. K. SWAN. [L. S.]
A. FRIBERG. [L. S.]
GEO. STEPHENS. [L. S.]
S. W. WHEELOCK. [L. S.]
JOHN GOOD. [L. S.]
C. H. DEERE, *Vice President.*
S. H. VELIE, *Sec'y.*
CHAS. BUFORD.

The erasures and interlineations, first, second, fifth, and sixth pages hereof, the sheet torn out hereof, all before execution hereof.

Recorded February 14, 1870.

205 To all to whom these letters patent may come:

Whereas M. G. Slemmons, of Cadiz, Harrison County, State of Ohio, did, on the 9th day of October, A. D. one thousand eight hundred and sixty, obtain letters patent from the Commissioner of Patents of the United States for the invention and construction of valuable improvements

in iron double-shovel plow, consisting in the arrangement of two curved beams, a cross-bar, separating the beams, passing through and receiving the handles fastened by a screw nut; also, the forked iron handles, being adjustable by means of slot and bolt; also, the notched or mortise shovels, vesting in me the sole right to manufacture, sell, and use said plow, and sell and convey the same to others, by deed of assignment, in accordance with the laws of the United States:

And whereas the said W. G. Slemmons, patentee aforesaid, did, on the 6th day of July, A. D. 1866, for a valuable consideration, grant, bargain, sell, and assign all his right, title, interest, and claim vested in him by said letters patent unto John L. Andrew and James B. Sexton, doing business under the name and style of Andrew & Co., of the city of Pella, county of Marion, and State of Iowa, in and to the territory of the State of Iowa:

Now, therefore, be it known that for and in consideration of the sum of three hundred and fifty dollars paid to us we do hereby grant, bargain, sell, convey, and assign all our right, title, interest, and claim vested in us by said letters patent and deed of assignment unto S. L. Hogelin, of Panora, County Pathrie, State of Iowa, his heirs or assigns, all that territory or tract of country known as Dalton, Pathrie, Audubon, Sh lly, Harrison, Pataivaltorine, Cass, Adoir, and Madison,
206 with the full benefit of the reissue of June 22, 1869, No. 3514, and we hereby authorize him, or his heirs, or assigns, to enter upon, manufacture, sell, and use said plows exclusively in said territory, and the right to sell and assign any portion thereof to others, excepting and reserving none, for the full term of fourteen years from the date of said patent.

In witness whereof we have hereunto set our hands this seventh day of March, A. D. 1870.

JAMES B. SEXTON.
JOHN L. ANDREW.

In presence of—
H. V. HUNT.
S. CARDESTY.

Recorded March 19, 1870.

To all to whom these letters patent may come:

Whereas I, M. G. Slemmons, of Cadiz, Harrison County, State of Ohio, did, on the 9th day of October, A. D. one thousand eight hundred and sixty, obtain letters patent from the Commissioner of Patents of the United States for the invention and construction of valuable improvements in iron double shovel plow, reissued June 22, one thousand eight hundred and sixty-nine, vesting in me the sole right to manufacture, sell, and use said plow, and sell and convey the same to others by deed of assignment in accordance with the laws of the United States:

Therefore be it known that for and in consideration of the sum of twelve hundred dollars paid to me, I hereby grant, bargain, sell, convey, and assign all my right, title, interest, and claim vested in me by said letters patent and reissue unto the firm of Brown, Manly & Co., of Malta, Morgan County, State of Ohio, his heirs or assigns, all
207 that territory or tract of country known as the counties of Allen, Ashtabula, Athens, Anglaize, Butler, Clarke, Clinton, Coshocton, Crawford, Darke, Defiance, Delaware, Erie, Fairfield, Fayette, Franklin, Fulton, Gallia, Gauga, Greene, Gurnsey, Hamilton, Hancock, Henry, Ross, Pike, Sandusky, Highland, Hocking, Huron, Jackson, Jefferson, Lake, Lawrence, Licking Lorain, Lucas, Monroe, Madison, Mahoning,

Sciota, Ottawa, Meigs, Mercer, Miami, Montgomery, Marion, Paulding, Muskingum, Shelby, Trumbull, Union, Perry, Preble, Vanwert, Vinton, Washington, Warren, Portage, Putnam, Williams, Wood, Pickaway, and I hereby authorize them or their representatives to enter upon, to manufacture, sell, and use said plows exclusively in said territory, and the right to sell and assign any portion thereof to others for the full term of fourteen years from the date of said patent.

In witness whereof I have hereunto set my hand and seal this the first day of July, A. D. 1869.

M. G. SLEMMONS, [L. S.]
By AGENT.

Witness:
W. H. HUBBARD.
Recorded March 30, 1870.

To all whom these letters patent may come:

Whereas M. G. Slemmons, of Cadiz, Harrison County, Ohio, did, on the 9th day of October, A. D. one thousand eight hundred and sixty, obtain letters patent from the Commissioner of Patents of the United States, for the invention and construction and improvement in iron double-shovel plows, which patent reissued June 22nd, one thousand eight hundred and sixty-nine, vesting in said M. G. Slemmons
208 the sole right to manufacture, sell, and use the said plow, and sell and convey the same to others by deed of assignment, in accordance with the laws of the United States.

And whereas "Brown, Manly & Co.," of Malta, Morgan County, Ohio, are now the owners of all the right of said Slemmons in said plow within the territory hereinafter named, by virtue of a deed of transfer executed by said M. G. Slemmons to said Brown, Manly & Co., dated the 1st day of July, 1869; now,

Therefore, be it known that for and in consideration of the sum of one thousand dollars in hand paid, we, the said "Brown, Manly & Co." do hereby grant, bargain, sell, convey, and assign all our right, title, interest, and claim in and to said letters patent and reissue unto the Brown, Manly Plow Company," of Malta, Morgan County, Ohio, its heirs, successors, legal representatives and assigns, all that territory or tract of country known as the counties of Allen, Ashtabula, Athens, Auglaize, Butler, Clark, Clinton, Coshocton, Crawford, Drake, Defiance, Delaware, Erie, Fairfield, Fayette, Franklin, Fulton, Gallia, Geauga, Green, Guernsey, Hamilton, Hancock, Henry, Ross, Pike, Sandusky, Highland, Hocking, Hudson, Jackson, Jefferson, Lake, Lawrence, Licking, Lorain, Lucas, Monroe, Madison, Mahoning, Scioto, Ottowa, Meigs, Mercer, Miami, Montgomery, Marion, Paulding, Muskingum, Shelly, Trumbull, Union, Perry, Preble, Van Wert, Vinton, Washington, Warren, Portage, and Putnam, in the State of Ohio, and we, the said Brown, Manly & Co., hereby authorize the "Brown, Manly Plow Company," its representatives and assigns to enter upon, to manufacture, sell, and use
209 said double shovel plow exclusively in said territory, and the right to sell and assign any portion thereof to others, for the full term of the issue and reissue of said letters patent, to wit, fourteen years from the date of said patent.

In witness whereof we, the said Brown, Manly & Co., have hereunto

set our hand and seal this 5th day of September, A. D. one thousand eight hundred and seventy.

BROWN, MANLY & CO. [L. S.]

Executed in presence of:—
NEWELL CORNER.
E. M. STANBERY.

Recorded February 9th, 1871.

To all to whom these letters patent shall come:

Whereas Mathew G. Slemmons, of Cadiz, Harrison County, Ohio, did, on the 9th day of October, A. D. one thousand eight hundred and sixty, obtain letters patent from the Commissioner of Patents of the United States for the invention and construction of valuable improvements in iron double shovel plows, which patent reissued June 22nd, A. D. one thousand eight hundred and sixty-nine, vesting in said Mathew G. Slemmons the sole right to manufacture, sell, and use the said plow, and sell and convey the said right to others by deed of assignment in accordance with the laws of the United States; and

Whereas the said Mathew G. Slemmons conveyed and assigned all his right and title in said right and letters patent unto William P. Brown, of Malta, Morgan County, Ohio, by deed dated October 29th, 1869, who is now the owner of said right and letters patent in the territory hereinafter named; now,

210 Therefore, be it known that for and in consideration of seven thousand dollars in hand paid by the said William P. Brown, do hereby grant, bargain, sell, and convey all my right, title, interest, and claim in and to said letters patent and reissue unto the "Brown, Manly Plow Company," of Malta, Morgan County, Ohio, its heirs, successors, legal representatives and assigns, all the following States, territory and tracts of country, to wit, the States Alabama, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Kansas, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Vermont, Virginia, West Virginia, Wisconsin, Nebraska, also Illinois (except Wabash, White, and Edwards Counties), also the unsold territory in the States of Pennsylvania, Indiana, and Missouri, also Nevada and all the Territories of the United States.

And I hereby authorize the Brown, Manly Plow Company, its successors and assigns, to enter upon to manufacture, sell, and use said plows exclusively in said States and Territories, and the right to sell and assign any portion thereof to others, for the full term of fourteen years from the date of said patent.

In witness whereof I, the said William P. Brown, have hereunto set my hand and seal this 5th day of September, 1870.

WILLIAM P. BROWN. [L. S.]

Executed in presence of—
NEWELL CORNER.
E. M. STANBERY.

Recorded February 9th, 1871

211 To all to whom these letters patent may come:

Whereas M. G. Slemmons, of Cadiz, Harrison County, Ohio, did, on the 9th day of October, A. D. 1860, obtain letters patent from the Commissioner of Patents of the United States for the invention and

construction of valuable improvements in iron double-shovel plows, reissued June 22nd, 1869, vesting in him the sole right to manufacture, use, and sell said plows, and sell and convey to others by deed of assignment in accordance with the laws of the United States; and

Whereas W. P. Brown, of Malta, Morgan County, Ohio, is now the sole owner with the right to sell and convey to others by deed of assignment:

Therefore be it known that for and in consideration of the sum of one thousand dollars paid to me I hereby grant, bargain, sell, and convey and assign all my right, title, interest, and claim, vested in me by said letters patent, unto Brown, Manly Plow Company, of Malta, Morgan County, Ohio, their heirs or assigns, all that tract of count'y known as the State of Iowa, excepting the counties of Jasper, Powsheik, Tama, Marshall, Story, Dallas, Guthrie, Audabon, Shelby, Harrison, Cass, Potawatomie, Adair, Madison, Lucas, Wayne, Decatur, Union, Ringgold, Adams, Iowa, Keokuk, Green, Muscatine, and Marion, and I hereby authorize them to enter upon and the right to sell or assign any portion thereof to others for the full term of the patent.

In witness whereof I have hereunto set my hand and seal this 2nd day of January, A. D. 1871.

W. P. BROWN. [L. S.]

Attest:

OLIVER C. ONG.

Recorded February 21st, 1871.

212 To whom all these letters patent may come:

Whereas Mathew G. Slemmons, of the town of Cadiz, county of Harrison, State of Ohio, did, on the 9th day of October, one thousand eight hundred and sixty, obtain letters patent from the Commissioner of Patents of the United States for the invention and construction of valuable improvements in double-shovel plows, and reissued June 22nd, one thousand eight hundred and sixty-nine, vesting in him the sole right to manufacture, sell, and use said plow, and sell and convey to others by deed of assignment, in accordance with the laws of the United States; and

Whereas the Brown, Manly Plow Company, of the town of Malta, county of Morgan, State of Ohio, are now the sole owners of the territory hereinafter named, and the right to manufacture, use, and sell said plow, and sell and convey to others by deed of assignment in accordance with the laws of the United States:

Therefore be it known that for and in consideration of the sum of one thousand dollars paid to them they hereby grant, bargain, sell and convey unto Conrad Furst and David Bradly, doing business under the name and style of Furst & Bradly, in the city of Chicago, and State of Illinois, their heirs or assigns, that territory or tract of country known as the States of Illinois, except the counties of Wabash, White, and Edwards therein; Wisconsin, except the county of Columbia therein; Minnesota, Nebraska, Kansas, Oregon, California, Missouri, except the counties of Lynn, Livingston, Mercer, Carroll, Crundy, Daviess, Ray, Caldwell, Clinton; Iowa, except the counties of Jasper, Poweshick, Tama, Dallas, Marshall, Story, Cass, Guthrie, Audabon, Shelby, Harrison, Lucas, Wayne, Decatur, Union, Ringgold, Iowa, Adair,
213 Potawotamie, Madison, Adams, Keokuk, Green, Muscatine, Marion, and all the Territories of the United States, and they hereby authorize them to manufacture, use, and sell said plows in all the above

territory described and not excepted for the full term for which said letters patent was granted.

In testimony of which they have hereunto placed their hands and seals this the 25th day of January, 1871.

BROWN, MANLY PLOW CO. [SEAL.]
Per W. P. BROWN, [SEAL.]
Attorney in fact.

Attest:
F. W. BECKNELL.
Recorded March 6th, 1871.

To all whom these letters patent may come:

Whereas Mathew G. Slemmons, of Cadiz, Harrison County, Ohio, did on the 9th day of October, 1860, obtain letters patent from the Commissioner of Patents of the United States, for the invention and construction of valuable improvements in iron double-shovel plows, which patent reissued June 22nd, 1869, vesting in said Mathew G. Slemmons the sole right to manufacture, use, and sell the said plow, and sell and convey the said right to others by deed of assignment, in accordance with the laws of the United States; and

Whereas the Brown, Manly Plow Company of Malta, Morgan County, Ohio, are now the sole owners of the said right in the territory herein named, and the right to sell and convey by deed of assignment; now,

Therefore, be it known that for and in consideration of the sum
214 of two hundred ($200) dollars in hand paid, we do hereby grant, bargain, sell and convey the right to manufacture, use, and sell said plow to Benton, Whitehead & Co., of Naperville, Illinois, in the following named territory, known as the States of Illinois, except the counties of Wabash, Edwards and White; Wisconsin, except the counties of Columbia; Minnesota, Kansas, Nebraska, Oregon, California, Missouri, except the counties of Linn, Livingston, Mercer, Carroll, Daviess, Grundy, Caldwell, Clinton and Ray; Iowa, except the counties of Jasper, Poweshick, Tama, Dallas, Marshall, Story, Cass, Guthrie, Audibon, Shelby, Harrison, Potawatomie, Adair, Madison, Lucas, Wayne, Decatur, Union, Iowa, Ringgold, Adams, Keokuk, Green, Muscatine, Marion, and all the Territories of the United States.

And we hereby authorize the said Benton, Whitehead & Co., of Naperville, Illinois, their successors and assigns, to manufacture, use and sell said plows, in above named States and Territories, for the full term of the patent.

In witness whereof we have hereunto set our hands and seals this 29th day of August, 1871.

BROWN, MANLY PLOW CO., [L. S.]
By O. C. ONG, *Agent.*

In the presence of—
C. B. BENTON.
Recorded September 2nd, 1871.

Received of Benton, Whitehead & Co. the sum of two hundred dollars in full for the within contract.

BROWN, MANLY PLOW CO.
O. C. ONG, *Agent.*

($200.)

To all to whom these letters patent may come:

Whereas I, M. G. Slemmons, of Cadiz, Harrison County, State
215 of Ohio, did on the 9th day of October, A. D. one thousand eight hundred and sixty, obtain letters patent from the Commissioner of Patents of the United States for the invention and construction of valuable improvements in iron double-shovel plow, consisting in the arrangement of two curved beams, a cross-bar separating the beams, passing through and receiving the handles fastened by a screw nut; also, the forked iron handles, being adjustable by means of slot and bolt; also, the notched or mortise shovels, vesting in me the sole right to manufacture, sell and use said plow, and sell and convey the same to others by deed of assignment in accordance with the laws of the United States:

Therefore, be it known that for and in consideration of the sum of two hundred dollars paid to me, I hereby grant, bargain, sell, convey and assign all my right, title, interest and claim vested in me by said letters patent unto William Boswell and Oliver P. Boyd, of Hendrix County, State of Indiana, his heirs and assigns, all that territory or tract of country known as Hendrix County, State of Indiana.

And I hereby authorize them or their heirs to enter upon, to manufacture, sell and use said plows, exclusively in said territory, and the right to sell and assign any portion thereof to others, excepting and reserving to, for the full term of fourteen years from the date of said patent.

In witness whereof I have hereunto set my hand and seal this 28th day of May, A. D. 1867.

M. G. SLEMMONS, [L. S.]
By W. P. BROWN, *Agent.*

Attest:
WM. MASON.
M. MASON.
Recorded May 31, 1872.

216 No. ($50.)

To all to whom these letters patent may come:

Whereas I, M. G. Slemmons, of Cadiz, Harrison County, Ohio, did, on the 9th day of October, A. D. one thousand eight hundred and sixty, obtain letters patent from the Commissioner of Patents of the United States for the invention and construction of valuable improvements in iron double-shovel plow, consisting in the arrangement of two curved beams, a cross-bar, separating the beams passing through and receiving the handles, fastened by a screw nut; also forked iron handles, being adjustable by means of slot and bolt; also the notched or mortise shovels, vesting in me the sole right to manufacture, sell and use said plow, and sell and convey the same to others by deed of assignment in accordance with the laws of the United States:

Therefore be it known that for and in consideration of the sum of fifty dollars paid to me, I hereby grant, bargain, sell, convey, and assign all my right, title, interest and claim vested in me by said letters patent, unto Boswell & Boyd, of Hendrix County, State of Indiana, his heirs or assigns, all that territory or tract of count'y known as the townships of Adams, Monroe, Brown, Madison, Harrison and Gregg, all in the coun-

ty of Morgan, State of Indiana, and I hereby authorize them or heirs to enter upon, to manufacture, sell and use said plows exclusively in said territory, and the right to sell and assign any portion thereof to others, excepting and reserving to, for the full term of fourteen years from the date of said patent.

In witness whereof I have hereunto set my hand and seal this 28th day of August, A. D. 1867.

M. G. SLEMMONS, [L. S.]
By W. P. BROWN, *Agent.*

Attest:
JOHN BROWN.

Recorded March 31, 1872.

217 ($50.)

To all whom these letters patent may come:

Whereas M. G. Slemmons, of Cadiz, Harrison County, State of Ohio, did, on the 9th day of October, A. D. 1860, obtain letters patent from the Commissioner of Patents of the United States for the invention and construction of valuable improvements in iron double-shovel plow, reissued June 22d, A. D. 1869, consisting of—

First. Two converging beams, each one of which has a shovel-standard, formed by bending its rear end.

2d. The converging beams connected together, and constructed with curved shovel-standards upon them.

3d. The union of the front ends of the plow-beams, which have their rear ends bent to form shovel-standards, by means of a clevis or device by which the teams are hitched to the implement.

4th. The converging plow-beams, having shovel-standards formed on them, in combination with handles and handle-supporting braces.

5th. In combination with the foregoing, also the manner of adjusting the handles and securing them to the beams at any desired angle.

6th. Constructing of one piece of metal a plow-beam and a curved shovel-standard, with shoulder framed on the latter.

Vesting in him the sole right to manufacture, sell, and use said plow, and sell and convey the same to others by deed of assignment, in accordance with the laws of the United States.

And whereas the Brown, Manly Plow Company, of Malta, Morgan County, State of Ohio, are now the sole owner for the territory hereinafter named:

Therefore be it known that for and in consideration of the sum
218 of fifty dollars ($50), paid to us, we hereby grant, bargain, sell, convey, and assign all our right, title, interest, and claim vested in us by said letters patent unto William Boswell & Bro., of Stilesville, Hendricks County, State of Indiana, his heirs or assigns, all that territory or tract of country known as Boon County, State of Indiana, and we hereby authorize them or their heirs to enter upon, to manufacture, sell, and use said plows exclusively in said territory, and the right to sell and assign any portion thereof to others, for the full term of fourteen years from the date of said patent.

In witness whereof we have hereunto set our hands and seal this 26th day of October, A. D. 1871.

BROWN, MANLY PLOW CO.,
By JOSHUA DAVIS, [L. S.]
President.
M. MCDANIEL, *Secretary.*

Recorded May 31, 1872.

Know all men by these presents that I, C. F. Mock, do hereby bargain and sell to Thomas Meikle & Co., of Louisville, State of Kentucky, my undivided and half interest, title, and right to use, make, manufacture, and vend within the State of Kentucky (excepting such counties thereof as may have been previously sold) M. G. Slemmons' patent double-shovel plow, said plow—known as Slemmons' improvement in iron double-shovel plows—consisting in the arrangement of two curved beams, a cross-bar for supporting the beams, passing through and receiving the handles, fastened by a screw nut; also the forked iron handles, being adjustable by means of a slot and bolt; also the notched or mortise shovels; said plow being patented to said Matthew G. Slemmons on October 9th, 1860.

219 Said patent right for the State of Kentucky (excepting such counties thereof as may have been previously sold) being owned jointly by C. F. Monk, of Louisville, State of Kentucky, and the Brown, Manly Plow Co., of Malta, State of Ohio. Said right was purchased of Matthew G. Slemmons by N. Rue and H. S. Bonta, of Mercer County, State of Kentucky, on the 19th day of June, 1866. In the year 1867 N. Rue and H. S. Bonta sold to C. F. Mock and Richard Grace the right to said iron-beam double-shovel plow for the counties of Marion and Washington, State of Kentucky. In the latter part of 1868 C. F. Mock and H. Dodua purchased of H. S. Bonta his half interest in all the remaining territory unsold in the State of Kentucky. In 1869 C. F. Mock purchased of Richard Grace and Henry Dodua their interests aforementioned. N. Rue and C. F. Mock then became owners jointly of the right in the State of Kentucky (excepting such counties as they had previously sold). N. Rue has since sold his undivided interest to the Brown, Manly Plow Company, of Malta, State of Ohio, and C. F. Mock, by these presents, does now sell, bargain, and convey his undivided right to make, sell, and vend said plow in the State of Kentucky (excepting such counties as may have been previously sold to the said Thomas Meikle & Co., of Louisville, State of Kentucky, as aforementioned).

This sale is made in consideration of the sum of two hundred and fifty dollars, cash in hand, to me paid by said T. Meikle & Co., of Louisville, State of Kentucky, and the receipt of said sum is hereby acknowledged.

In witness whereof I, C. F. Mock, have hereunto set my hand this 10th day of June, 1872.

C. F. MOCK.

220 STATE OF KENTUCKY,
Jefferson County:

I hereby certify that C. F. Mock this day came personally before me, a justice of the peace for the county aforesaid, and acknowledged the within deed to be his act and deed.

Given under my hand this 10th day of June, 1872.

A. W. WALLER,
J. P., J. C.

Recorded June 12, 1872.

To all to whom these letters patent may come:

Whereas I, M. G. Slemmons, of Cadiz, Harrison County, State of Ohio, did on the 9th day of October, A. D. one thousand eight hundred and sixty, obtain letters patent from the Commissioner of Patents of the United States for the invention and construction of valuable improvements in iron double-shovel plow, consisting in the arrangement of two curved beams, a cross-bar, separating the beams, passing through and

receiving the handles, fastened by a screw-nut; also the forked iron handles, being adjustable by means of slot and bolt; also the notched or mortise shovels; vesting in me the sole right to manufacture, sell, and use said plow, and sell and convey the same to others, by deed of assignment, in accordance with the laws of the United States:

Therefore be it known that for and in consideration of the sum of twelve hundred dollars, paid to me, I hereby grant, bargain, sell, convey, and assign all my right, title, interest, and claims vested in me by said letters patent unto N. Kue, H. L. Bonta, all of Mercer
221 County, State of Kentucky, their heirs or assigns, all that territory or tract of country known as the State of Kentucky (excepting the counties of Fayette, Woodford, Harrison, and Montgomery), and I hereby authorize all or any one of them to enter upon, to manufacture, sell, and use said plows exclusively in said territory, and the right to sell and assign any portion thereof to others, excepting and reserving to , for the full term of fourteen years from the date of said patent.

In witness whereof, I have hereunto set my hand and seal, this 19th day of June, A. D. 1866.

M. G. SLEMMONS, [L. S.]
By W. P. BROWN, *Agent.*

STATE OF KENTUCKY,
Mercer County:

Before the undersigned, an acting clerk of the county court, in and for said county, personally appeared the above named W. P. Brown, attorney, and acknowledged the signing and sealing of the above deed, for the purpose therein specified, to be his voluntary act.

Witness my hand and seal this 19th day of June, 1866.

C. S. ABELL, *Clerk.*

Recorded June 22nd, 1872.

This agreement, made and entered into by and between Mathew G. Slemmons, of Iowa, party of the first part, and the firm of Leg-
222 gett & Leggett (constituted of Wells W. Leggett and Leverett L. Leggett), of Washington City, D. C., party of the second part, witnesseth:

That whereas I, the said Slemmons, did, on or about the 9th day of October, 1860, obtain from the United States Patent Office letters patent, No. 30357, for improvement in plows, which said letters patent were reissued June 22nd, 1869, No. 3514; and

Whereas the said Leggett & Leggett, of the second part, are desirous of acquiring the sole ownership and control of the extended term or terms of the said reissued letters patent, if extended, and whereof I, the said Slemmons, claim the sole right to sell the extended term of said patent, and not to have assigned the same or contracted therefor, and have delivered my affidavit to said Leggett & Leggett, narrating the substance of all former negotiations and conversations to the best of my recollection and belief that I have ever had, in relation to the extension of the said patent, except as to such transactions had with the party of the second part: Now,

Therefore, I, Mathew G. Slemmons, party of the first part, for and in consideration of one dollar, to me in hand paid, by Leggett & Leggett, party of the second part, receipt of which is hereby acknowledged and confessed, do hereby sell, assign, and set over to the said Leggett &

Leggett, their heirs and assigns, all the right, title, and interest that I possess in the said invention, or may become possessed of by virtue of the said letters patent, or any extensions or reissue thereof. The same to be held and enjoyed by the said Leggett & Leggett, their heirs and assigns, to the full extent that the same would have been held and enjoyed by me had this assignment, sale, and transfer not been made.

In further consideration of which the said Leggett & Leg-
223 gett, party of the second part, agree to bear all the expenses of applying for and securing the said extension of the said reissued letters patent, and do agree faithfully to serve the said Slemmons as his attorneys in prosecuting his said application for extension without further pay or remuneration from the said party of the first part.

That in addition to the above consideration they do agree to pay to the said Mathew G. Slemmons (at Iowa City, Iowa) the sum of two thousand ($2,000) dollars, sixty days after the extension of the said patent may have been granted, and also agree to defend and indemnify the said Slemmons, party of the first part, against all damages, costs and suits claimed and prosecuted or recovered against him by any and all persons by reason of any claim of right to said extended patent or interest therein.

This agreement and assignment is upon the express condition, however, that upon the failure of the said Leggett & Leggett, party of the second part, to pay said two thousand ($2,000) dollars, as above specified, or to indemnify and save harmless, said Slemmons against damages, costs, and suits as aforesaid, the said patent and extension thereof shall thereupon revert to and become the property of said Slemmons, and the title revest in him the same as though this agreement, assignment, and sale had not been made.

The said Slemmons promises that as required by the said party of the second part, he will do all in his power to assist them in their efforts to secure the said extension, and will execute, as required from time to time, any legal papers, or render any legal testimony that may be required in the prosecution of the said application for extension,
224 and that he will do nothing in opposition to the said extention, all, however, at the expense of the said party of the second part.

Signed, sealed, and entered into at Iowa City, Iowa, this 23d day of February, 1874.

MATHEW G. SLEMMONS, [SEAL.]
Party of the first part.
LEGGETT & LEGGETT, [SEAL.]
Party of the second part,
By WELLS W. LEGGETT,
A member of the firm.

Witnesses:
JAS. B. EDMONDS.
P. RANSOM.

Five pages marked J. B. E.
Recorded October 12, 1874.

This agreement, made and entered into by and between Leggett & Leggett, a firm doing business at Washington, D. C., constituted of Wells W. Leggett and Leverett L. Leggett, party of the first part, and the Brown Manufacturing Company, of Zanesville, Ohio, and Brown, Manly Plow Company, of Malta, Ohio, parties of the second part, witnesseth.

That whereas letters patent for an improvement in plows was

granted to Mathew G. Slemmons, October 9th, 1860, No. 30357, which letters patent were reissued June 22nd, 1869, No. 3514; and whereas the said Slemmons, by lawful assignment, did transfer all the right, title and interest in the extended term thereof, if extended, to the said Leggett & Leggett, of the first part; and whereas the said parties of the second part are desirous of manufacturing implements containing the said patented improvements. Now, therefore, the parties agree as follows:

1st. The party of the first part grants to the said parties of the
225 second part the exclusive license to make the said patented improvements, and to embody them in implements of their own manufacture (without conveying to them any authority to license to others to so make and embody them), in the States of Ohio, Indiana, Kentucky, Tennessee, Virginia, and West Virginia, and to sell the implements or machines so manufactured anywhere within the United States, for and during the whole of the extended term of the said patent, if extended.

2nd. The parties of the second part agree that they will supply the demand for the said plows, in the said territory, viz: Ohio, Indiana, Kentucky, Tennessee, Virginia, and West Virginia, and that they will use reasonable diligence to keep and maintain the said demand.

3d. That the parties of the second part agree to make full and true returns to the party of the first part, under oath, upon the last day of the months of March, June, September, and December, in each year, of all implements containing the said patented improvements manufactured and shipped or otherwise disposed of by them, the number of machines made that embody the patented improvements more than once, and the sum total of said embodiments of the said patented improvements.

4th. The parties of the second part agree to pay to the said party of the first part quarterly, on the last day of each of the months of March, June, September, and December of each year, twenty (20c.) cents, as a license fee upon each and every embodiment of the patented improvements in the implements that they may manufacture and dispose of as aforesaid, provided that of those are on hand at the time of the expira-
tion of the said extended term and not disposed of, any machines
226 embodying the said patented improvements, the license fee above named shall be paid upon them the same as upon others when they shall have been so disposed of.

5. That the said party of the first part shall use reasonable diligence to prevent unlawful manufacture of the said patented improvements in the said territory, viz: Ohio, Indiana, Kentucky, Tennessee, Virginia, and West Virginia, and to prosecute such parties as unlawfully persist, after due notice, in such infringements.

6th. The said party of the first part does warrant and will defend said patent.

7th. It is agreed also that the parties of the second part, by their duly authorized officers and agents, shall have power to dispose of shop-rights and licenses under the said patent in every part of the United States (except Ohio, Indiana, Kentucky, Tennessee, West Virginia, and Virginia), for a sum gross in each case or upon royalty, the said royalty for each embodiment of the said patented improvements in a hand plow to be not less than thirty-five (35c.) cents, and for each wheel cultivator not less than one ($1.00) dollar, and nothing herein contained shall be construed as depriving the said party of the first part of a similar privilege in the same territory at the same rates.

8th. It is also agreed that each party to this contract shall keep a separate and accurate book account, open at all *all* times to the inspection of the opposite party or his duly authorized agents or attorneys, of each and all transactions relating to or involving the said patent, and shall render to the other accurate quarterly statements on the last day of each of the months of March, June, September, and December of each year, of the gross receipts on account of the said sales of shop rights and licenses, and shall, after deducting the actual and
227 necessary expenses of effecting the said transactions, transmit to the other party one-half of the balance and retain the other half as its own share, accounting individual services as nothing.

9th. Both parties agree to exercise reasonable efforts to effect transactions under the seventh section of this contract.

10th. The parties of the second part agree to pay to the said party of the first part, thirty days after notice of the extension of said patent, the sum of two thousand dollars, cash, and upon failure to pay the said sum at or before the time stated, this contract to be void and of no effect.

11th. That in all actions at law or in equity, instituted by the party of the first part against infringers, both parties shall bend their personal services, without pay, and the necessary expenses shall fall equally upon each of the parties of the first and second part.

12th. That no action shall be instituted under the said patent, except upon the mutual consent of the parties to this contract.

13th. It is agreed by the parties of the first part that they will dispose of no portion of the patent except as hereinbefore stipulated, without the concurrence of the parties of the second part.

In witness whereof the parties have executed and do hereby execute this instrument in duplicate interchangeably, this 19th day of May, A. D. 1874, at Zanesville, Ohio.

LEGGETT & LEGGETT,
Party of the First Part.
BROWN, MANLY PLOW CO.,
By E. M. STANBERY, *Sec'y.*
BROWN MANUFACTURING CO.,
By W. P. BROWN, *Supt.*,
Party of the Second Part.

228 In the matter of a certain contract of even date with these presents, between the firm of Leggett & Leggett, party of the first part, and the Brown Manufacturing Company and Brown Manly Plow Company, parties of the second part, in regard to the patent of Mathew G. Slemmons, for improvement in plows, dated October 9th, 1860, and reissued June 22nd, 1869.

It is hereby agreed in consideration of the twenty (20c.) cents royalty, paid and to be paid upon each embodiment of the said patented improvements in machines manufactured by the said parties of the second part, in accordance with the terms of the said contract, that the said parties of the second part in paying the same may retain as rebatement one-half (50%) of each of said royalties upon the patented improvements contained in the implements manufactured by them.

Signed at Zanesville, Ohio, this 19th day of May, 1874.

LEGGETT & LEGGETT,
Party of the first part in said contract.

Recorded April 17th, 1875.

229 *Complainant's exhibit.—Original file contents.*

The U. S. Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the file of this office of the file-wrapper and contents in the matter of letters-patent granted Mathew G. Slemmons, dated October 9th, 1860, No. 30357, for Improvement in ploughs.

In testimony whereof, I, Ellis Spear, acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this fifteenth day of March, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundredth.

[L. S.] ELLIS SPEAR,
Acting Commissioner.

Petition.

To the Commissioner of Patents:

The petition of Mathew G. Slemmons, of Cadiz, in the county
230 of Harrison and State of Ohio, respectfully represents:

That your petitioner has invented a new and useful improvement on the double shovel plough, which he verily believes has not been known or used prior to the invention thereof by your petitioner. He therefore prays that letters patent of the United States may be granted to him therefor, vesting in him, and his legal representatives, the exclusive right to the same, upon the terms and conditions expressed in the act of Congress in that case made and provided, he having paid thirty dollars into the Treasury, and complied with the other provisions of the said act.

MATHEW G. SLEMMONS.

(Across the face, in red:) Canceled.

Specification.

To all whom it may concern:

Be it known that I, Mathew G. Slemmons, of Cadiz, in the county of Harrison, in the State of Ohio, have invented a new and useful improvement in double shovel plough, and I do hereby declare that the following is a full, clear, and exact description of the construction and operation of the same, reference being had to the annexed drawing, and to the letters of reference marked thereon, and also to the accompanying model (accompanying and marked "M. G. Slemmons, Cadiz, Ohio"), which, together with said drawing, I make part of this specification: I hereby disclaim the original invention of the double shovel plough, but claim to be the inventor of the following new and useful improvements thereon, to wit:

231 1st. The entire construction thereof of wrought iron and steel, except the holders of the hands, which are covered with wood.

2d. The continuous and solid wrought iron double beam.

3d. The guard which is closed down on the shovel share at the end of each beam.

4th. The notch in each share thereby forming a shoulder on two sides of the beam to prevent the shovel share from moving or turning sidewise.

5th. The handles to each beam made of two wrought-iron rods, so adjusted as to brace each other, thereby combining strength and durability with tightness.

6th. The lower rod of each handle connected with the beam by an open mortise one inch and a half in length and attached by a bolt through the beam and secured by a nut, and the upper rod of each handle connected with the beam by the cross-brace, which is round and on which said rod turns, thereby enabling the plowman to adjust and adapt the handles of the plough to his stature, by elevating or depressing the same. The right beam is four feet in length, the left beam is four feet nine inches in length, sixteen inches of each beam being curved as shown by A, A, in the accompanying drawing; said beams being each one and a half inch broad and a half inch thick from the connecting brace to point, and the residue of said beam from connecting brace to shovel shear being one inch and three-fourths broad, and three-fourths of an inch thick. The shovel shears are made of steel 11 inches long by 10 inches wide at upper and secured as above, and also by a bolt one inch and a half below the guard of the beam as shown by B, B, on drawing. The beams are connected 2 feet 8 inches from the
232 point thereof by a round wrought-iron brace 7¼ inches in length between the beams and extending through the beams to receive handles as shown by C, on the drawing. The handle on the right beam consists of two wrought-iron rods round, each being $\frac{9}{16}$ of an inch in diameter, the upper rod thereof being 2 feet 9 inches in length from junction with beam to connecting rod between the handles above, and working or turning at junction with beam on end of said brace "C"—the lower rod thereof being of the same material and size except that it is in length 2 feet 6½ inches from junction with beam to connecting rod between the handles; said lower rod at junction with beam being connected by an open mortise 1½ inches in length; said two rods being separated on beams 6½ inches, and at upper cross-brace joined and welded together, and each end thereof secured upon their fastenings by nuts. The handle on the left beam consists of two round iron rods of the same diameter and form with those above mentioned, with like connections at beam and upper junction thereof; the upper rod of said handle on left beam being in length 2 feet 9 inches from beam to connecting rod above, and the lowered rod thereof being in length 2 feet 1 inch from junction with beam to connecting rod above; said last rod on left beam being slightly curved at lower end, so that the open mortise will work on the bolt, attaching the same to beam; said two last mentioned rods being separated on beam at their connections 11 inches; the hand-holders consist of said iron handles being drawn out square from the upper connecting rod and curved with wood. The said two handles are connected above by a round rod of wrought iron $\frac{7}{16}$th of an inch in diameter and twenty inches in length between the handles; a
233 shoulder thereon fitting up to each handle on the inside, which rod extends through the handles and is fastened on the outside by a nut on each end thereof and which rod is shown by D, on drawing. An iron clevis is attached to the point of beams in the ordinary method as shown by E, in drawaing.

What I claim as my invention and improvement on the double shovel plough, and which I desire to secure by letters patent, is the construction of the entire plough of iron and steel, the continuous and solid wrought-iron double beam, the fastenings and security of the share by the guard and notch; the combination of the braced wrought iron handles, securing thereby lightness and strength; the connection of the

handles to the beams by the open mortise and round brace, thereby enabling the plowman to adjust and adapt the handles to his statu'e, constructed, arranged, and operating in the manner and for the purpose substantially as above set forth.

MATHEW G. SLEMMONS.

Signed in our presence by said—
MATTHEW G. SLEMMONS.
LANCELOT HEARN.
CHAS. PATTERSON.

(Across the face, in red:) Canceled.

CADIZ, HARRISON COUNTY,
State of Ohio, ss:

On this 15th day of January, A. D. 1855, before the subscriber, a justice of the peace within said county, personally came the above and within named Mathew G. Slemmons, made and solemn oath that
234 he verily believes himself to be the original and first inventor of the improvements on the double-shovel plough herein described, and that he does not know or believe the same was ever before known or used, and that he is a citizen of the United States.

LANCELOT HEARN, [SEAL.]
Justice of the Peace.

(Across the face, in red:) Canceled.

THE STATE OF OHIO,
Harrison County, ss:

I, Charles Patterson, clerk of the court of common pleas within and for said county of Harrison, do hereby certify that the above-named Lancelot Hearn, esq., before whom the above affidavit or declaration on oath of Mathew G. Slemmons was taken and sworn to, and whose name to the certificate thereof is subscribed, was at the time of taking the said affidavit or declaration on oath and so certifying and subscribing the same, and now is, a justice of the peace within and for said Harrison County, duly commissioned and qualified as such, and that to all whose official acts as such full faith and credit is due.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at the clerk's office in Cadiz, in said county, this 15th day of January, in the year of our Lord one thousand eight hundred and fifty-five, A. D. 1855.

[L. S.] CHARLES PATTERSON, *Clerk.*

Received, filed January 20th, 1855.
235 Answer January 20th, 1855.

CADIZ, *January 15th*, 1854.

To the Commissioner of Patents:

D. SIR: I understand that Mathew Slemmons, of Cadiz, Harrison County, Ohio, has made application to your office for a patent for making and vending the iron double shovel plow.

If any patent should be issued for that improvement I claim to have been the discoverer, and first suggested the improvement to Mr. Slemmons.

Of the above statement I am ready to make affidavit to its truth at

any time. I therefore object to a patent issuing to the said Slemmons for the same; and desire that the department should inform me what proceedings are necessary to prevent a patent issuing to said Slemmons, further than the above statement.

Respectfully yours,

E. LAIZURE.

See letter of Feb. 16th, 1855, and Slemmons' statement in extension relating to Laizure.

FEB. 3, '55.

In examining your app. for lett. patent for a plough, similar beam-handles and mode of fastening are found in the app. of W. F. Pagett, rej. 20 Jan., 1852. Your guard and notch for holding the shovel are seen in the plough of M. & S. J. Meims, patented 23 Dec., 1841. And the adjustability of the handles exist in the plough of J. S. Hall, patented Aug. 1, 1854, but applied for in 1853.

Therefore your claims are rejected.

MATHEW G. SLEMMONS,
Cadiz, Harrison Co., Ohio.

236 CADIZ, OHIO, *February 16th*, 1855.

To the Commissioner of Patents:

DEAR SIR: I hereby inform you that the claims of M. G. Slemmons and myself for a patent for the iron double shovel plough have been amicably settled between us here, on the 14th of this month, and that I do not intend setting up any further claim for a patent on the same, in the Patent Office.

Please except my thanks for your kind attention towards me in this matter.

E. LAIZURE.

Petition.

To the Commissioner of Patents:

The petition of Mathew G. Slemmons, of Cadiz, in the county of Harrison and State of Ohio, respectfully represents:

That your petitioner has invented a new and improved plow, which he verily believes has not been known or used prior to the invention thereof by your petitioner. He therefore prays that letters patent of the United States may be granted to him therefor, vesting in him and his legal representatives the exclusive right to the same, upon the terms and conditions expressed in the act of Congress in that case made and provided; he having paid thirty dollars into the Treasury, and otherwise complied with the requirements of said act. And he hereby authorizes O. D. Munn, S. H. Wales, and A. E. Beach, of the firm of Munn & Co., or their accredited agents, to act as his attorneys in presenting the application, and in making all such alterations and amendments as may be required, and to receive the letters patent when granted.

MATHEW G. SLEMMONS.

237 *Oath.*

STATE OF OHIO,
County of Harrison:

On this 26th day of June, 1860, before the subscriber, a justice of the

peace in and for said county, personally appeared the within-named Mathew G. Slemmons, and made solemn oath that he verily believes himself to be the original and first inventor of the within-described improved plow, and that he does not know or believe that the same was ever before known or used; and that he is a citizen of the United States.

THOS. PHILLIPS,
Justice of the Peace.

The application of Mathew G. Slemmons, for improvement in double-shovel plows, is hereby amended by cancelling the present specification and drawing, and substituting therefor the following specification and accompany' drawings.

MUNN & CO.,
Attorneys for M. G. Slemmons.

JULY 9, 1860.

To all whom it may concern:

Be it known that I, Mathew G. Slemmons, of Cadiz, in the county of Harrison, and State of Ohio, have invented a new and useful improvement in double-shovel plows; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawing, forming a part of this specification, in which—

238 A perspective view of my improved double-shovel plow is represented.

My invention consists in the particular arrangement of the several parts in the manner and for the purpose hereinafter described.

To enable others skilled in the art to make and use my invention I will proceed to describe its construction and operation.

A, A, represent two iron beams which are united at their front ends by means of the pin which retains the clevis B, and spread apart at their rear ends. Each of these beams terminates in a curve standard so as to support shovels *c*, *c*, as represented. D is a transverse bar for bracing the beams laterally. The ends of this bar are made round, pass through the beams, and extend some distance beyond the outside face of the same. E, E, are forked iron handles, braced at the top by a transverse bar D. The lower prong E of each of these handles attaches to the side of the beams by means of loops *a*, slots *b*, and set screws or pins C, while the upper prong F attaches to the round end *m*, *m*, of the brace D, so as to turn loosely on the same. It will be observed that the slots allow the handle to be raised and lowered to suit the height of different plowmen, and that the round ends *m*, *m*, of the brace serve as the axis for the handles to turn upon while being adjasted.

The shovels *c*, *c*, are attached to the curved standard of the beams by means of a shoulder *d*, a notch *e*, screw-bolt *f*, and a mortice *g*, as represented.

My plow is very light and yet very durable; it also is capable of being made of any width desired, as the light iron beams can be sprung
239 apart, more or less, and the transverse bar be inserted at a point nearer to or farther from the clevis. The forked handles also, by being light, can be spread apart more less accordingly as the beams are spread apart, and the position of the transverse bar is changed.

I do not claim any one part of the plow, nor the operation of any one part of the same, but

What I do claim as my invention, and desire to secure by letters patent, is—

The arrangement of the two curved shouldered beams A, A, a clevis B, transverse bar D, *m*, slotted adjustable forked handles E, E, *b*, and notched and morticed shovels C, C, *c*, in the manner and for the purpose described.

MATHEW G. SLEMMONS,
By MUNN & CO.,
Attorneys.

Amended specification filed July 3d, 1860.

19–129. No. 30357. X X. Mathew G. Slemmons, of Cadiz, county of Harrison, State of Ohio. Plough.

Oath renewed June 26th, 1860.
Received January 20th, 1853.
Petition " " "
Affidavit " " "
Specification " " "
2 drawings January 19th, 1855.
Model " " "
240 Cert. dep.
1. Cash, $30, January 20th, 1855.
2. Examined J. W. Shugert, September 27th, 1860.
Issue Shugert September 27th, 1860.
3. Patented October 9th, 1860.
Recorded, vol. 121, page 149.

MUNN & CO.,
W. D. C.

Protest within filed January, 1855.
Rejected, 3d February, 1855.
Specification and thin drg. to us July 3d, 1860.

MUNN & CO.,
Per A. N. LEE.

Reissued June 22, 1869.

241 *Complainant's exhibit.—File contents Slemmons' first reissue.*

The United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office of the file-wrapper and contents in the matter of reissue letters patent granted Mathew G. Slemmons dated June 22d, 1869, Nos. 3514, for improvement in plows.

In testimony whereof I, Ellis Spear, acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this sixteenth day of March, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundredth.

[L. S.]

ELLIS SPEAR,
Acting Commissioner.

The petition of Mathew G. Slemmons, of Cadiz, in the county of Harrison, and State of Ohio, respectfully represents:

That he did obtain letters patent of the United States for an
242 improvement in double-shovel plows, which letters patent are dated on the 9th day of October, 1860, and numbered 30357, and that he now believes that the same are inoperative and invalid by rea-

son of a defective specification, which defect has arisen from inadvertence and mistake. He therefore prays that he may be allowed to surrender the same, and requests that new letters patent may issue to him for the same invention for the residue of the period for which the original patent was granted under the amended specification herewith presented, he having paid thirty dollars into the Treasury of the United States, agreeably to the requirements of the act of Congress in that case made and provided. And he hereby authorizes Messrs. Mason, Fenwick and Lawrence, of Washington, D. C., to act as his attorneys.

MATHEW G. SLEMMONS.

STATE OF OHIO,
County of Harrison, ss:

On this 8th day of December, 1868, before the subscriber, a notary public, personally appeared the above named Mathew G. Slemmons, and made solemn oath that he verily believes that by reason of an insufficient or defective specification his aforesaid patent is not fully valid and available to him, and that the said error has arisen from inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, to the best of his knowledge or belief.

As witness my official signature and seal notarial this day and year above written.

[L. S.]

WM. C. GASTON,
Notary Public.

213 Mathew G. Slemmons' original patent, dated on the 9th day of October, 1860, numbered 30357.

To all whom it may concern:

Be it known that I, Mathew G. Slemmons, of Cadiz, in the county of Harrison, and State of Ohio, have invented a new and improved double-shovel plow; and I do hereby declare that the following is a more full, clear, and exact description thereof, reference being had to the accompanying drawings making a part of this specification, in which

Figure 1 is a perspective view of the improved plow.

Figure 2 is a side elevation of the plow, and

Figure 3 is a plan or top view of the same.

Similar letters of reference indicate corresponding parts in the several figures.

One object of this invention is to construct a double-shovel plow whose shovels are secured to standards that are formed upon and that form a part of their respective beams, which latter converge toward their front ends, and have a clevis so attached to these ends that the draft of the team will act equally upon both plows, as will be hereinafter explained.

And another object is to brace handles which are applied to converging plow-beams in such manner that a rigid attachment of each handle is effected in a very simple and substantial manner.

Another object is to unite the front ends of the plow-beams in such manner that the draught ring or clevis by which the plow is drawn will pull equally upon both said ends, as will be hereinafter explained.

To enable others skilled in the art to understand my invention, I will explain its construction and operation.

214 In the accompanying drawings AA represent the metal plow-beams which are connected together so as to converge toward their front ends, at which points these beams are suitably connected and provided with a clevis, B, which may be pivoted to a transverse

pin, *g*, as shown in the drawings, or which may be applied in any other suitable manner, whereby a strong hitching attachment of the team can be made to the beams.

By thus bringing the two beams A A together it will be seen that the draft upon the clevis, B, will operate uniformly upon both of them in drawing the machine along. Each one of these beams, A, terminates at its rear end in a standard, A′, which is formed by bending the metal substantially in the manner shown in figures 1 and 2, so that each beam and its standard, or depressed end, A′, will be formed of one piece of metal or of the same piece of metal, thereby affording great strength, and admitting of the parts being made much stronger and with greater facility than if each beam and standard was made of separate pieces and then secured together by bolts, rivets, or otherwise.

It is obvious that the curved form of the standards will be much stronger than an abrupt or angular shoulder, as the strain in the former instance is uniformly distributed, while in the latter instance the strain would be chiefly confined to the knee or angular shoulder. The invention is not, however, confined to the exact form of curve given to the standards, shown in the drawings.

The shovels, *c c*, which may be made of any suitable form, is preferably secured to the standards by shoulder abutments, *d d*, formed on the front edges of these standards by bolts, *f*, the heads of which
245 are countersunk into the shovels, *c c*, and by recesses, *e e*, which are formed in the top edges of the shovels as shown in figure 1. The shoulders, *d d*, assist in preventing lateral as well as upward displacement of the shovels, and relieve the bolts, *f f*, from considerable strain.

One of the beams A is somewhat shorter than the other, so that one shovel, *c*, will be properly in advance of the other, and the two beams A A are connected together near their rear termini by a transverse bar or tie-brace D′, which has its ends reduced and passed through the beams and also through the front ends of handles F F, and upon these ends nuts are secured so as to hold the parts together. This bar D′ not only braces the beams and standards against outward strain, but it also holds them against lateral compression.

If desirable, provision may be made for adjusting the bar D nearer to or further from the clevis B, for the purpose of expanding or contracting the beams and their shovels standards, more or less as may be required. The beams A A will spring at and near their front ends sufficiently to allow of said adjustments.

The plow handles F F are attached to the beams A A at *m m*, and secured readily in place at any desired angle by means of rear supports and braces E E, which are attached to the beams or to the upper portions of the standards A′ A′, in rear of the handle connections. The drawings represent each handle and its support and brace, made of one piece of metal by splitting a bar of metal in the form of a fork, one prong of which forms a handle, and the others the supports and brace; but I do not confine myself to this mode of manufacturing the handles and their brace supports. The tangs, which are formed on the upper termini of the handles, receive the wooden holders T T, as shown in the drawings.

246 The transverse bar D keeps the handles and their supporting braces at the required distance apart.

If it is desirable to provide for adjusting and setting the handles F F at different angles with respect to the plow beams A A, to suit different plowmen, this may be done by pivoting the front ends of the handles to

the ends of bar D′ and connecting the lower ends of the supporting braces E E to the beams or standards by means of straps *a* and bolts or screws *c*′, which latter pass through oblong slots *b*, made through said braces E E, substantially as shown in the drawings, Figures 1 and 2. By loosening the screws *c*′, the handles can be adjusted as above stated.

Having described my invention, what I claim as new and desire to secure by letters patent is:

1st. Two converging beams A A, each one of which has a shovel standard A′, formed by bending its rear end, substantially as described.

2nd. The converging beams A A, connected together and constructed with curved shovel standards A′ A′ upon them, substantially as described.

3d. The union of the front ends of plow beams which have their rear ends bent to form shovel standards by means of a clevis or device, by which the team are hitched to the implement, substantially as described.

4th. The converging plow beams A A, having shovel standards A′ A′ formed on them, in combination with handles F F and handle-supporting braces E E, substantially as described.

5th. In combination with the foregoing, I also claim the manner, substantially as described, of adjusting the handles F F and securing them to the beams at any desired angle.

247 6th. Constructing of one piece of metal a plow beam A and a curved shovel standard A′, with a shoulder *d* formed on the latter, substantially as described.

MATHEW G. SLEMMONS.

Witnesses:
W. G. GASTON.
JOHN WILLIAMS.

The United States Patent Office. To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the digests of this office of all assignments found of record under and relating to letters patent No. 30357, granted October 9th, 1860, to Mathew G. Slemmons, for "plough."

In testimony whereof I, Elisha Foote, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this fifth day of January, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-third.

[L. S.] ELISHA FOOTE,
Commissioner.

Abstract of all assignments found of record in the United States Patent Office, under and relating to letters patent No. 30357, granted October 9th, 1860, to Mathew G. Slemmons, for "ploughs."

248 M. G. Slemmons to S. R. Weirich and Christian Weirich, jr.

Dated March 18, 1861.
Recorded May 18, 1861.
Iron double-shovel plow.
October 9, 1860.
"His right in Holmes County, Ohio."
Liber G, 6, page 30.

M. G. Slemmons to S. R. Weirich, jr., Christian Weirich, and John Casey, r.

Dated March 25, 1861.
Recorded May 18, 1861.
Iron double-shovel plow.
October 9, 1860.
"His right in counties of Wayne and Stark, in Ohio."
Liber G, 6, page 30.

M. G. Slemmons, by his attorney, A. B. Cummings, to William H. Coombs and A. S. Brewunt.

Dated July 26, 1861.
Recorded June 20, 1862.
Iron double-shovel plough.
October 9, 1860.
"His right in township of Brown, in Miami County, Ohio."
Liber P, 6, page 171.

M. G. Slemmons to Hall and Spear.

Dated October 13, 1864.
Recorded Nov. 21, 1864.
"Ploughs, Oct. 9, 1860."
"All right, title, &c., he has in Allegheny County, Pennsylvania."
Liber P, 7, page 404.

249 Andrew & Co., per Jas. B. Sexton, ag't, to Charles Eckert.

Dated August 9, 1866.
Recorded May 29, 1867.
Iron double shovel plow.
October 9, 1860.
"All their right in said patent in Iowa County, State of Iowa."
Liber N, 9, page 40.

M. G. Slemmons, by W. P. Brown, agent, to Wm. H. Fisher and Wm M. Murry.

Dated May 4th, 1866.
Recorded May 4th, 1868.
Iron double-shovel plow.
October 9th, 1860.
"All his right in said patent in the counties of Linn, Livingston, Grundy, Mercer, Daviess, and Harrison, in the State of Missouri."
Liber P, 10, page 122.

M. G. Slemmons and E. Laizure to Wm. P. Brown.

Dated January 27th, 1866.
Recorded May 18th, 1868.
Double shovel plow.
October 9th, 1860.
"Power of attorney to sell their right in said patent in Indiana, Missouri, and Kentucky, and in all unsold territory in Ohio."
Liber R, 10, page 76.

U. S. PATENT OFFICE,
Washington, D. C., January 8th, 1869.

MATHEW G. SLEMMONS,
Care Mason, Fenwick & Lawrence, present:

SIR: Please find below the decision of the examiner in charge
250 in the matter of your application for a re-issue of patent No. 30357, dated the 9th day of October, 1860, for plows, and issued to Mathew G. Slemmons, filed December 19th, 1868.

Very respectfully,

Commissioner.

EXAMINER'S ROOM, No. 4.

The application above referred to has been examined, and the claims allowed. But before a patent can be issued, the concurrence of all the assignees in the surrender must be obtained.

J. BRAINARD.

WASHINGTON, D. C., *March 23d*, 1869.

HON. E. FOOTE,
Commissioner of Patents:

SIR: In matter of M. G. Slemmons' application for re-issue of his patent for improvement in plows, the patent for which was ordered to issue, but held back for consent of assignees, we herewith file sundry "consents" of assignees, and respectfully ask that the patent be allowed to go forward.

Yours, truly,

MASON, FENWICK & LAWRENCE.

PITTSBURGH, *January 27th*, 1869.

MR. M. G. SLEMMONS,
Iowa City, Iowa:

DEAR SIR: Yours of 19th inst. received, and you have our consent to apply for a renewal of the patent for the iron double-shovel plow.
251 We herewith hand you our price list of plows, &c., and shall be pleased to receive your orders.

We remain, yours, truly,

HALL & SPEAR,
Per M. HOLMES.

P. S.—It is understood that our consent shall not take from us any right that we now have.

PELLA, MARION CO., IOWA, *January 4*, 1868.

MR. W. P. BROWN,
Malta, Ohio:

DEAR SIR: Yours of the 28th of December is at hand. We note your statement of the probable results of the pending application for reissue of the double shovel plow. Hope you will be successful. Make it good this time, and we are all right, but if not sound in every particular we are just as "bad off" as ever. We say "go in." Advise us amediately. and in the meantime I will wa'ch the "Report" of the "Patent Office," which I get "weekly," for the Ishue.

Anxiously waiting the results and hoping for the full realization of our most ardent wishes, we remain,

Yours truly,

ANDREW & CO.
(SEXTON.)

MARENGO, *February* 23, 1869.

Sirs:—i received a letter from you to-day which was written
252 the 20th of January it has been delayed somewhere you speak of a reishue i will take it of course immediately for i do not feel right the way the thing is working now

Please let me hear from you soon.

Yours ever,

CHARLES ECKERT.

MALTA, O., *March* 6, 1869.

GENTS: enclosed is consent of C. Eckert of—

M. G. SLEMMONS,
Per W. P. BROWN.

PELLA, MARION CO., IOWA, *February* 27, 1869.

Mr. W. P. BROWN,
Malta, Ohio:

DEAR SIR: Yours just Recd & and by the same mail I got a letter from Mr. Eckchast which I will enclose

Rush the thing through. With our regard.

Yrs. resp.,

ANDREWS & CO.

M. G. Slemmons. Malta, O., 1869, February 9-12 f 10-12.

MALTA, O., *February* 9, 1869.

Messrs. MASON, FENWICK & LAWRENCE:

GENTS: Enclosed find the consent of Hall & Spear, Pittsburgh, also a letter from Andrews & Co., Iowa. I have written to all the parties, but have not as yet received any answers, some of the parties have moved away and their territory abandoned.

You can give the assurance to the Patent Office as there will
253 be no objection, as I know the opinion of all the parties who own territory, they have urged something done. I will send the names as fast as they come in, please have the papers filled up at an early day as many parties are manufacturing these plows regardless of notice sent them. If convenient please send a good form of patent deed, from which I may copy a deed to sell territory, this you can do free of charge, also please state as to whether this reissue will stand a good test at law. I have advised a gentleman in this place to apply through you for a patent on a cutting-box.

Enclosed find ten dollars; if the Commissioner, through your assurance will issue this, you would be safe in giving such assurance.

Yours,

M. G. SLEMMONS,
Per W. P. BROWN.

MALTA, O., *March* 18, 1869.

Messrs. FENWICK & LAWRENCE:

GENTS: Having made every effort to hear from the balance of the assignees of territory, and do not know there whereabouts, consequently cannot get their consent. Would be glad if the case could be prosecuted without farther delay. Let me hear as to prospects.

Yours,

M. G. SLEMMONS,
Per W. P. BROWN.

U. S. PATENT OFFICE,
Washington, D. C., March 25, 1869.

MATTHEW G. SLEMMONS,
Care of Mason, Fenwick & Lawrence, present:

Please find below a communication from the examiner, in the
254 matter of your application for a reissue of patent No. 30,357, for "improvement in ploughs," filed December 19th, 1866.
Very respectfully,

Commissioner.

EXAMINER'S ROOM, No. 4.

In response to attorney's communication of the 23d inst., enclosing letters of assent to the reissue by certain assignees, they are informed that the rule in this case is imperative, and requires the consent of all parties holding interest by assignment. If the obtainment of the consent of certain parties is not possible for reasons other than the unwillingness of these parties, an affidavit should be filed setting forth these reasons, the steps that have been taken to remove the objections, and the belief of the applicant that the consent of the assignees cannot, for the causes alleged, be obtained by him.

J. BRAINARD, *Examiner.*

WASHINGTON, D. C., *April* 2, 1869.

Hon. E. FOOTE,
Comm'r, &c.:

Herewith for Professor Brainard, examiner in charge, we transmit another consent to the reissue of the patent of M. G. Slemmons for cultivator plow.

The lifetime of this patent is passing away, and we hope that the insignificant moiety still of outstanding interest in assignees will not be insisted upon by the Patent Office as necessary to be found and consent procured for the reissue. One client has used extraordinary exertion to procure consent of the assignees, and the exceeding small territory outstanding now should not be allowed to bar the applicant from his rights.

Repectfully,

MASON, FENWICK & LAWRENCE.

255 MALTA, O., *March* 26, 1869.

Messrs. MASON, FENWICK & LAWRENCE:

GENTS: Enclosed is the consent of S. C. Weirich, who has bought the interest of the two Weirich's and John Casey, now owning the *the* whole of the territory, do not expect to har from the one owing the township in Miami County, this, I think, is sufficient to satisfy the Patent Office of the consent of the assignees of territory; as soon as this comes to hand attend to the matter.

Yours,

M. G. SLEMMONS,
Per W. P. BROWN.

MILLSBURGH, *March* 22, 1869.

Messrs. M. G. SLEMMONS:

SIRS: I have no objections as to the reissue of your pattent on the

double shovel iron plow, which I have the wright of Holmes, Wayne and Stark Countys, Ohio, which I bot of you. Hoping you may succeed.

I am yours truly,

S. R. WEIRICH.

I have the exclusive wright of these 3 counties, having bot out my former partners.

S. R. W.

U. S. PATENT OFFICE,
Washington, D. C., April 7, 1869.

MATTHEW G. SLEMMONS,
Care Mason, Fenwick & Lawrence, present:

Please find below a communication from the examiner, in the matter of your application for a reissue of patent 39,357, filed December 19, 1869.

Very respectfully,

Commissioner.

256 EXAMINER'S ROOM, No. 4.

The entire interest in the patent must be represented.

BRAINARD.

STILESVILLE, IND., *April* 28.

SIR: Yours is received and noted. We have no objections to the reissue of M. G. Slemmons' patent, No. 30,351, in double-shovel plows.

Respectfully,

BOSWELL & BRO.

CRAWFORDSVILLE, *April* 28, 1869.

Mr. W. P. BROWN:

Yours of the 20th is at hand and contents noted. I have no objection to a reissue of M. G. Slemmons' patent on iron double-shovel plows, No. 30,357, 1860.

N. B.—I am all right on the plow now, as the people all need them, those using them would not have a wooden one. I suppose we, the old owners, will be entitled to the new reissue. Please accept of my best wishes, and I remain,

Very respectfully,

JOHN A. GRIFFIN.

KINGSTON, MO., *April* 30, 1869.

I have no objections to a reissue of Mr. G. Slemmons' patent, No. 30,357, October, 1860.

Yours truly,

J. SACKMAN.

257 GOSPORT, IND., *May* 1, 1867.

Mr. W. P. BROWN,
Malta, Ohio:

SIR: Yours of the 19th April received. We have made some changes in the last year as you will perceive above, and we also let Messrs. Stine & Dagley have the double shovel plow business. We made some money out of it last year, and would have kept it and made some this year, but

we did not like the style in which Stine got them up, and we have about as much as we can attend to at any rate. Messrs. Stine and Dagley authorize me to say that they have no objections to a reissue of M. G. Slemmons' patent in plows No. 30357, 1860.

They are making about 125 plows this year.

General trade is rather dull with us.

Truly yours,

M. E. BUNGER.

BEDFORD, IND., *May* 8, 1869.

Mr. W. P. BROWN, Esq.:

DEAR SIR: Your letter was duly received and contents noted. Your explanation is all right and satisfactory. We have never had anything to come out any other way than you represented in which you figured. Everything you said in regard to the double shovel has come out just as you represented. We are selling all we can make, and they are increasing in favor with the people every year, and we want the benefit of all the law possible in order to protect ourselves from infringements, so we say we certainly have no objection to a reissue of M. G. Slem-
258 mons' patent, No. 30357 on double shovel plow. Now, Mr. Brown, Davis Co., Indiana, is in our territory, and there are parties there making a similar plow, near enough like this to make it impossible for us to sell ours there, and we have notified them of all facts in the case, but they will not stop, and say they will make them as long as they please, and we are going to prosecute them, and we want to know if it is necessary for us to have our deed recorded in Washington City before we enter suit, and also, if there will have to be any changes made in the deed or a new one given?

Please answer these questions and oblige,

Yours, very truly,

ADAMS BROTHERS.

HARRODS, KY., *May* 8, 1869.

We, the undersigned owners of M. G. Slemmons' improvement in iron beam double shovel plows, have no objections to a reissue of said Slemmons' patent No. 30357.

NELSON RUE.
HENRY T. BONTZ.

STANFORD, LINCOLN CO., KY., *May* 11, 1869.

Mr. W. P. BROWN:

DEAR SIR: I received a letter on yesterday from Mr. N. Rue, of Harrodsburg, wishing me to write to you soon. He states that you was agent of M. G. Slemmons for the sale of the pattent on double shovel plows, No. 30357. I purchased of Mr. Rue and Bontz the right of this county for making and selling said plow. I have no objection to a reishue of your patent if it will not interfere with my right to make and sell
259 the plows in this county, and would greatly prefer your doing so, if I am in no way to be injured by the same.

Yours, respectfully,

JAMES CROW.

N. B.—I would be pleased to receive a communication from you on reception of this, as I am much pleased with the plow, and have succeeded well in the sale of them. Direct your letter to Stanford, Lincoln County, Ky.

J. CROW.

ARLINGTON, WIS., *May* 16, 1869.

W. P. BROWN:

SIR: I received your letter last evening and hasten to answer. You have my consent to a reissue, for I think it would be a good thing. Now, D. S. Slater, of Madison, has a patent on a three shovel plow, curved beam. All the difference there is between his and yours, his has an adjustable slot for opening and shutting; the beams the same principle as Joliets, made his at Beverly. He can also move the shovel on the beam, as the sulky plow does. I did not think when he applied he would get a patent, for I thought it would infringe on the double shovel, but it seems he has. Brown, there is a man in Montello, Marquette Co., by the name of John Murphy, that made some plows last spring, but whether he is making now or not I don't know. It is about thirty miles from here. If I have sale for my plows this summer I don't know but I would like Marquette myself. Don't sell without notifying me anyhow. Imay possibly be at Malta this fall any way. I would be glad to hear from you at any time.

260 I have no objections to a reissue of M. G. Slemmons' patent, No. 30357, 1860, on shovel plows.

THOS. MCDONALD,
Poynette, Columbia Co., Wis.

MOLINE, ILL., *May* 19, 1869.

W. P. BROWN, Esq.:

DEAR SIR: We have no objection to the reissue of M. G. Slemmons' patent on plows, 30357, we to have the same rights as under existing patent, with benefit of new issue, without extra charge, with right to make and use without royalty, unless protected.

Very truly yours,

MOLINE PLOW CO.

The above terms have been agreed to by me.

M. G. SLEMMONS.

AUBURN, KY., *May* 31, 1869.

Messrs. BROWN, MANLY & CO.:

GENTS: We have no objection to the reissue of M. G.'s pattent No. 30357, October, 1860. Do you. Do you own the right of the South now?

Yours, &c.,

VEISS & CO.

AUBURN, KY., *May* 21, 1869.

Mr. M. G. SLEMMONS:

SIR: We have no objection to the reissue of your patent, No. 30357, October, 1860.

Yours, &c.,

VEISS & CO.

261 STATE OF IOWA,
Johnson County, ss:

I, Matthew G. Slemmons, of the county of Johnson and State of Iowa, being duly sworn, do say upon oath that I am the owner of patent No. 30,357, for "Improvements in ploughs;" that since the date of the granting of said patent I personally, and through my agents, have sold an interest in said patents to a great many persons in the United States; that

I have never had an correct or complete list of the assignees, and, therefore, do not know their post-office address; that for this reason I cannot obtain their written consent to the reissue of said patent; that I have written to all assignees whose post-office address I know; that I have received in many cases an reply, consenting to an reissue, all which replys I have filed in the U. S. Patent Office; that I have not received any replies refusing such an reissue and that I believe that for the foregoing mentioned causes the consent of all the assignees cannot be obtained.

MATHEW G. SLEMMONS.

Subscribed and sworn to by Mathew G. Slemmons before me, H. F. Bonordan, a notary public, in and for the county of Johnson and State of Iowa, this 29th day of June, A. D. 1869.

[L. S.] H. F. BONORDAN,
Notary Public.

WASHINGTON, D. C. *June* 7, 1869.

Hon. COMMISSIONER OF PATENTS:

SIR: We herewith in matter of application of M. G. Slemmons for reissue of his patent for imp't in plows or cultivator, file in y'r department the consent for said reissue of the following parties, viz:

262 Nelson Rue, Henry Bentz, Harrods, Ky.
Messrs. Stine & Dagley, Gosport, Indiana.
John A. Griffy, Crawfordsville, Indiana.
T. Sackman, Kingston, Mo.
Messrs. Veiss & Co., Auburn, Ky.
Thos. T. McDonald, Poynette, Wis.
Adams Bros., Bedford, Ind.
James Crow, Stanford, Ky.
Boswell & Bro., Stilesville, Ind.
Moline Plow Company, Moline, Ill.

In addition to the above, we this day file the affidavit of Matthew G. Slemmons, showing that after diligent trying, &c., he is unable to procure any further consent of assignees owing to his ignorance of their present residence.

We trust that no further objection will be urged by the Patent Office against the issue of the patent.

We are, respectfully, &c., &c.,

MASON, FENWICK & LAWRENCE,
For M. G. SLEMMONS.

(Sent June 24th to Cadiz, Ohio.)

MALTA, *June*, 22, 1869.

Messrs. MASON, FENWICK & LAWRENCE:

GENTS: As the time which you stated that the papers would be forthcoming has expired, we wish to enquire at what time they may be expected, as matters of some importance depends on the early ar'ival of them, please state.

Yours,

M. G. SLEMMONS,
Per W. P. BROWN.

263 Direct postmaster at Cadiz, Ohio, to send the patent which is at his office for M. G. Slemmons, to said Slemmons, address at Malta, O., care W. P. Brown.

Mr. HIRSCH:

Professor Brainard told me two months ago about that he had ordered this reissue case of Mr. Slemmons to go forward for a patent. See how the matter stands.

DAT.

Issued and withdrawn. Letters written 8 January, 26 March, 7 April.

MALTA, O., AMY, *Sept.* 2, 1869.

COMMISSIONER OF PATENTS,
Washington, D. C.:

SIR: the reissue or Deed for my improvement in Double Shovel Plow, No. 30,357, Patented October 9th, 1860, has not reached me and it being sent about the first of June by my report from Mason, Fenwick & Lawrence, my agents, it should have been sent to Malta, O., not Cadiz, as it is not my place of residence, i sent to Cadiz and it was then forwarded to Marshalltown, Iowa, which was another mistake I have sent there but can get no answer, the same may be returned to the dead letter office, if so forward the same to me at Malta, Ohio, Morgan County.

N. B.—This reissue dates about June 1st, 1869, got by Mason, Fenwick & Lawrence, for M. G. Slemmons.

MATHEW G. SLEMMONS,
Per W. P. BROWN, *Agent.*

WASHINGTON, D. C., *January* 5, 1870.

Hon. COMMISSIONER OF PATENTS:

SIR: In matter of my application for patent for a plow, filed in
264 your Office on or about the 22nd (twenty-second) day of December, 1868, I beg hereby to formally renew and call up the case as required by the rule of y'r Office. Remaining,

Yours truly,

M. G. SLEMMONS,
By MASON, FENWICK & LAWRENCE.

Reissued June 22nd, 1869.

TO THE COMMISSIONER OF PATENTS:

SIR: Be it known that I hereby constitute and appoint Leggett & Leggett, D. C., of Washington, D. C., as my attorneys in the matter of my application for extension of letters patent No. 30,357, of October 9th, 1860, reissued June 22nd, 1869, No. 3,514; subject, plows; and I hereby authorize and request the said Messrs. Leggett & Leggett to make any disclaimer, or to do any other act demanded by the Patent Office in the matter of the extension of my patent; and I hereby ratify any disclaimers or other acts or performances that they may take in the premises.

M. G. SLEMMONS.

Witnesses:
JAMES E. EDMONDS.
CHARLES N. NEWMAN.

In the matter of the application of Matthew G. Slemmons for extension of reissued letters patent No. 3,514, for improved plows, granted June 22nd, 1869.

Hon. COMMISSIONER OF PATENTS:

SIR: In the above matter I would respectfully state that I am the

owner of the whole right and title to the said letters patent No. 3514, for improved plow, and do not desire to hold by virtue of said let-
265 ters patent any of that part of the invention as claimed in claims one (1), two (2), three (3), four (4), and six (6). I do, therefore, hereby disclaim all that part of the said invention covered the said letters patent, that it embraced in the said above enumberated claims. That is to say, following words, viz:

1st. Two converging beams, A A, each one of which has a shovel standard A′, formed by binding its rear end substantially as described.

2nd. The converging beams A A, connected together and constructed with curved shovel standards A′ A′ upon them, substantially as described.

3d. The union of the front ends of plow beams which have their rear ends bent to form shovel standards by means of a clevis or device, by which the team are hitched to the implement, substantially as described.

4th. The converging plow beams A A, having shovel standards A′ A′ formed on them, in combination with handles F F, and handle supporting braces E E, substantially as described.

6th. Constructing of one piece of metal a plow beam A, and a curved shovel standard A′, with a shoulder *d* forward on the latter, substantially as described.

Reserving right to reissue in proper form.

Respectfully, &c.,

MATTHEW G. SLEMMONS,
By LEGGETT & LEGGETT,
His Attorneys.

Witnesses:
ACLAND BOYLE,
R. M. BARR.

WASHINGTON, D. C., *October* 5, 1874.

Recorded, vol. 1, page 230.

266 Matthew G. Slemmons' Improved Plow.

This invention consists in the converging curved beams A A, the union of their front end by means of a clevis or similar device; the handles F F and supporting braces E E, the manner of adjusting the handles and securing them to the beams, and the constructing of the plow-beam A and curved shovel standard A′ of one piece of metal, all as shown and described.

Reissue No. 30357, 3514. $\frac{21}{25}$. Mathew G. Slemmons, of Cadiz, county of Ha*milton*, State of Ohio. Ploughs.

Disclaimer filed October 5th, 1874.
Received December 19, 1868.
Petition, December 19, 1868.
Affidavit, December 19, 1868.
Specification, December 19, 1868.
1. Drawing, December 19, 1868.
Old Patent, No. 30357, October 9, 1860.
Certificate deposit.
1. Cash, $30; December 19, 1868.
Cash, $10; October 5, 1874.
1. Examined December 30, 1868, Brainard.
2. Issue, Grinnell, December 31, 1868.

4. Patented October 9, 1860.
Reissued June 22, 1869.

MASON, FENWICK & LAWRENCE,
Present.

LEGGETT & LEGGETT,
267 *Present.*

1. Rejected December 28, 1868.
Letter, January 8, 1869.
Letter, March 26, 1869.
Letter, April 7, 1869.
Reissued November 10, 1874, No. 6131.

268 *Complainant's exhibit.—File contents complainant's reissue.*

The United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy, from the files of this office, of the file-wrapper and contents, in the matter of reissue letters patent granted Mathew G. Slemmons, assignor to Leggett & Leggett, dated November 10th, 1874, No. 6131, for improvement in plows:

In testimony whereof, I, Ellis Spear, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this sixteenth day of March, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundredth.

[L. S.] ELLIS SPEAR,
Acting Commissioner.

Hon. COMMISSIONER OF PATENTS:

SIR: In the matter of my application for reissue of letters patent No. 3514, reissued to me June 22nd, 1869, being the reissue of letters patent No. 30357, granted to me October 9th, 1860, for plow, I
269 hereby appoint Messrs. Leggett & Leggett, of Washington City, D. C., as my attorneys, with full power of substitution and revocation, to prosecute my said application, to make alterations and amendments therein, to receive the patent, and to transact all business with the Patent Office connected therewith.

MATHEW G. SLEMMONS.

We assent to the above application for reissue.

WELLS W. LEGGETT.
LEVERETT L. LEGGETT.

To the Commissioner of Patents:

SIR: Your petitioner, of Iowa City, county of Johnson, State of Iowa, prays that he may be allowed to surrender the reissued letters patent for an improvement in plows, granted to him June 22nd, 1869, No. 3514 (being the reissue of original letters patent, No. 30357, granted to him October 9th, 1860), whereof Leggett and Leggett (composed of Wells W. Leggett and Leverett L. Leggett) are now the sole owners by assignment, subject to certain conditions, and that letters patent may be reissued to them, the said Leggett & Leggett, for the same invention upon the annexed amended specification. Accompanying this petition is an abstract of title duly certified as required in such cases.

MATHEW G. SLEMMONS.

To all whom it may concern:

Be it known, that I, Matthew G. Slemmons, formerly of Cadiz, Ohio, now of Iowa City, county of Johnson, State of Iowa, have invented a new and improved double shovel plow; and I do hereby declare
270 that the following is a full, clear, and exact description thereof, such as will enable others skilled in the art to which my invention pertains to make and use it, reference being had to the accompanying drawings, making a part of the specification, in which

Figure 1 is a perspective view of the improved plow.

Figure 2 is a side elevation of the plow, and

Figure 3 is a plan or top view of the same.

Similar letters of reference indicate corresponding parts in the several figures.

One object of this invention is to construct a double shovel plow, whose shovels are secured to standards that are formed upon and that form a part of their respective beams, which latter converge toward their front ends, and have a clevis so attached to these ends that the draft of the team will act equally upon both beams, as will be hereinafter explained.

And another object is to brace handles which are applied to converging plow beams in such manner that a rigid attachment of each handle is effected in a very simple and substantial manner.

Another object is to unite the front ends of the plow beams in such a manner that the draught ring or clevis by which the plow is drawn will pull equally upon said ends, as will be hereinafter explained.

To enable others to make, understand and use my invention, I will explain its construction and operation.

In the accompanying drawings AA represent the metal plow beams, which are connected together so as to converge toward their front ends, at which point these beams are suitably connected rigidly together, and provided with a clevis, B, which may be pivoted to a transverse pin, *g*, as shown in the drawings, or which may be applied in any other
271 suitable manner, or any other suitable clevis device may be employed whereby the plow may be connected with the draft, and whereby a strong hitching attachment is effected.

By thus bringing the two beams AA together it will be seen that the draft upon a clevis at B will operate uniformly upon both of them in drawing the plow along. Each one of the beams, A, A, terminates at its rear end in a standard, A′, which is formed by bending the metal substantially in the manner shown in figures 1 and 2, so that each beam and its standard or depressed end A′ will be formed of one piece of metal, or of the same piece of metal, thereby affording great strength, and admitting of the parts being made much stronger and with greater facility than if each beam and its standard were made of separate pieces, and then secured together by bolts, rivets, or otherwise.

It is obvious that the curved form of the standards will be much stronger than an abrupt or angular shoulder, as the strain in the former instance is uniformly distributed, while in the latter instance the strain would be chiefly confined to the knee or angular shoulder. The invention is not, however, confined to the exact form of curve given to the standards, shown in the drawings.

The shovels *c*, *c*, which may be made of any suitable form, are preferably secured to the standards by shoulder abutments *d*, *d*, formed on the front edges of these standards, by bolts, *f*, *f*, the heads of which are countersunk into the shovels *c*, *c*, and by recesses *e*, *e*, which are formed in the top edges of the shovels, as shown in figure 1. The shoulders, *d*,

d, assist in preventing lateral as well as upward displacement of the shovels, and relieve the bolts, *f*, *f*, from considerable strain.

272 One of the beams, A, is somewhat shorter than the other, so that one shovel, *c*, will be properly in advance of the other; and the two beams, A A, are connected together near their rear termini by a transverse bar or tie-brace D′, which has its ends reduced and passed through the beams, and also through the front ends of the handles F, F, and upon these ends nuts are screwed so as to hold the parts together. This bar, D′, not only braces the beams and standards against outward strains, but it also holds them against lateral compression.

If desirable provision may be made for adjusting the bar, D, nearer to or further from the clevis, B, for the purpose of expanding or contracting the beams, and their shovel standards, more or less, as may be required. The beams, A, A, will spring at and near their front ends sufficiently to allow of said adjustments.

The plow handles, F, F, are attached to the beams A, A, at *m*, *m*, and secured rigidly in place at any desired angle by means of rear supports and braces E, E, which are attached to the beams, or to the upper portions of the standards A′, A′, in rear of the handle connections. The drawings represent each handle and its support and brace, made of one piece of metal by splitting a bar of metal in the form of a fork, one prong of which forms a handle, and the other the support and brace, but I do not confine to this mode of manufacturing the handle and their brace supports.

The tangs, which are formed on the upper termini of the handles, receive the wooden holders, T, T, as shown in the drawings.

The transverse bar, D, keeps the handles and their supporting braces at the required distance apart. If it is desirable to provide for adjusting and setting the handles F, F, at different angles with respect

273 to the plow beams A, A, to suit different plowmen, it may be done by pivoting the front ends of the handles to the ends of bar D′, and connecting the lower ends of the supporting braces E, E, to the beams or standards by means of straps *a*, and bolts or screws *e*′, which latter pass through oblong slots *b*, made through said braces E, E, substantially as shown in the drawings Figures 1 and 2. By loosening the screws *e*′, the handles can be adjusted as above stated, and it is evident that the straps *a* may be dispensed with if desired.

Having described my invention, what I claim as new, and desire to secure by letters patent, is:

(1.) Two diverging beams A, A, fastened rigidly together at the clevis, and having their rear ends bent to form shovel standards substantially as described.

(2.) Two diverging beams A, A, that have their rear ends bent to form shovel standards and their front ends merged into a clevis or device, by which the draught is communicated to the plow.

(3.) The converging beams A, A, fastened rigidly together at the clevis, and having standards A′ A′ formed on them, in combination with handles F, F, and handle supporting braces E, E, substantially as described.

(4.) In combination with the foregoing, also the manner substantially as described of a adjusting the handles F, F, and securing them to the beams at any desired angle.

MATHEW G. SLEMMONS.

Witness.
P. RANSOM.
ALBERT SHEPARD.

Erase and insert "A," November 4, 1874.

274 STATE OF IOWA,
County of Johnson, ss :

Mathew G. Slemmons, the above named petitioner, being duly sworn, deposes and says that he verily believes that by reason of an insufficient or defective specification his aforesaid letters patent are inoperative or invalid; that the said error has arisen from inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, to the best of his knowledge and belief; that Leggett and Leggett (composed of Wells W. Leggett and Leverett L. Leggett) are the sole owners, subject to the conditions of the contract of sale, of the said letters patent, and that this application is made with their knowledge and consent, and for their benefit, and that he verily believes himself to be the first and original inventor of the improvement set forth and claimed in this amended specification.

MATHEW G. SLEMMONS.

Sworn to and subscribed before me this 9th day of October, 1874.
[L. S.]
P. RANSOM,
Notary Public, Johnson County, Iowa.

The United States Patent Office. To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the digest of this office of all assignments of undivided interests found of record under or relating to letters patent granted to Matthew G. Slem-
275 mons, No. 30357, dated October 9th, 1860, reissued June 22d, 1869, No. 3514, extended October 9th, 1874, for plow.

In testimony whereof I, M. D. Leggett, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twelfth day of October, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-ninth.

[L. S.]
M. D. LEGGETT,
Commissioner.

M. G. Slemmons to Leggett & Leggett, a firm constituted of Wells W. Leggett and Leverett W. Leggett.

Dated February 23, 1874.
Recorded Oct. 12, 1874.
Plows.
October 9, 1860—30357.
Reissued June 22, 1869—3514.
Extended October 9, 1874.
All his right in said invention or all the right he may have by virtue of said letters patent or any extension or reissue thereof.
See record for particulars of agreement between said parties. Liber . page .

276 No. 1.

EXAMINER'S ROOM, NO. ,
U. S. PATENT OFFICE,
Washington, D. C., October 19, 1874.

Mathew G. Slemmons, assignor to Leggett & Leggett, care of Leggett & Leggett, Washington, D. C. Subject, plows. Reissue, Filed October 12, 1874. 21—40. Plows, cultivators.

The above-named application has been carefully considered in all its bearings. The original patent, dated October 9th, 1860, and reissued June 22d, 1869, was extended on the fifth of the present month upon a single claim, which has its duplicate in the fourth claim of this application for a reissue. The first, second, and third claims in this application embody the spirit of the claims upon which an extension was refused by the Commissioner, as will be seen by his report, dated October 5th instant. Now, while it is admitted that these new claims differ, in their wording, from the claims upon which the extension was refused, on reference to the patents of Paget, March 30, 1852; Edwards, September 19, 1846, and Minis, December 23, 1841, it is believed that their restoration to the patent, by a reissue, as now asked, would be in direct opposition to a fair and reasonable interpretation of the Commissioner's decision, except as to the fifth claim, now embodied in the fourth. For the hereinbefore-named reasons a reissue of the amended claims is refused except as to the fourth.

J. BRAINERD,
Acting Examiner.

UNITED STATES PATENT OFFICE,
October 21st, 1874.

In answer to the interlocutory appeal in the matter of the appli-
277 cation of Mathew G. Slemmons, for a reissue of his extended patent, filed October 12, 1874, I have the honor to report that the ground upon which the first, second, and third claims are refused is based upon the expressed opinion that the claims in question, if admitted, would virtually restore to the extended patent all the essential features that are embraced in the first, second, and fourth claims found in the reissue of June 22, 1869, and which were refused by the Commissioner in his decree for the extension of said patent. And it is the firm conviction of the undersigned that should the patent be thus reissued it would virtually possess all the force that it would have done had the first, second, and fourth claims not have been ruled out by the Commissioner.

J. BRAINERD,
Acting Examiner.

No. 1.

EXAMINER'S ROOM, No. ,
UNITED STATES PATENT OFFICE,
Washington, D. C., October 23, 1874.

Cultivators. Reissue, filed Oct. 12, 1874. 21—40. Plows, cultivators

MATHEW G. SLEMMONS,
Care of Leggett & Leggett, Washington, D. C.:

The interlocutory appeal in this case having been dismissed, with instructions to proceed with the examination, proceedings are had as follows: In addition to the references cited in the answer to the interlocutory appeal, the patent of G. G. Black, July 14, 1857, is given as appli-

cable to the first, second, and third claims, and a rejection of said claims is declared.

Reference in cultivators.

J. BRAINERD,
Act. Ex.

278 WASHINGTON, D. C., *Nov. 4th*, 1874.

Hon. COMMISSIONER OF PATENTS:

SIR: In the matter of M. G. Slemmons' application for reissue of letters patent for plow, filed October 11th, 1874, we respectfully amend the specification, as follows, to accord with the decision of the Commissioner thereon.

Erase claim 1, and insert instead thereof the following:

"(1.) Two diverging beams, A A, that have their rear ends bent to form shovel standards, the said beams being fastened rigidly together, substantially as described, at, and springing from, the point of attachment, for the draft."

Erase claim 2 and insert:

"(2.) Two diverging beams, A A, that have their rear ends bent to form shovel standards, and their front ends fastened rigidly together and merged into a device, substantially as described, whereby the plow may be attached to the draft."

Erase claims 3 and 4 and insert:

"(3.) The combination substantially as described, with the two plow-beams, A A, of the handles F F, and adjustable handle supporting braces E E."

Respectfully, &c.,

MATTHEW G. SLEMMONS,
By LEGGETT & LEGGETT,
Attorneys.

Approved for examination.

J. M. THATCHER,
Commissioner.

(43) 1874. $\frac{21}{46}$

Reissue No. 6131. Mathew G. Slemmons, assignor to Leggett & Leggett, of Iowa City, County of Johnson, State of Iowa. Plows.

279 Received October 12, 1874.
Petition " " "
Affidavit " " "
Specification " " "
Drawing " " "
Abstract of title " 13 "
Certified copy, old patent, reissue 3514, June 22, 1869.

Cert. dep.

1. Cash, $30. Oct. 12, 1874.

Examined November 4th, '74.—O. C. Fox.

2. Issue, Nov. 4th, 1874. Knight.

'Patented October 9, 1860.
Reissued June 22, 1769.
Again reissued Nov. 10, 1874. } Extended 7 years.
Recorded vol. , page .
Nov. 4, '74.

LEGGETT & LEGGETT,
Present.

1874.

Contents.

Application, papers.
1. Rejected Oct. 19, 1874.
2. Interlocutory appeal, Oct. 20.
3. Answer to int. appeal, Oct. 21.
4. Commissioner's decision. Appeal.
5. Dismissed. Ex. to proceed.
6. Rejected Oct. 23, 1874.
7. Reasons for appeal, &
8. Supplement thereto, Oct. 24, 1874.
9. Answer to reasons, Oct. 24.
10. Amend't, Nov. 4, 1874.

280 *Bf.*

11
12
13
14
15
16
17
18

97 Plows.
(43) Cultivators.

Title.

Improvement in plows.

Div. 1.

281 *Complainants' Exhibit.—File wrapper Pagett rejected application.*

No. . (B.)

W. F. Pagett, of White Post, county of Clarke, State of Virginia. Improvement in cultivators.

Received January 22d, 1852.
Petition " " "
Affidavit " " "
Specification " " "
1 drawing " " "
Model " " "

CERT. DEP.
1. Cash, $30.
2. Examined.
Issue.
4. Patented , 185 .
Recorded, vol. page .

Cash to applicant in person, 7 Feb., 1852.

X C.
Reported to exam'r Jan. 23, 1852.
Rej. Jan. 26, '52.

REC. 755—9

282 *Complainants' Exhibit.—Pagett patent file wrapper.*

No. 8842. (A.)

W. F. Pagett, of White Post, county of Clarke, State of Virginia. Shovel Plough.

Received January 22d, 1852.
Petition " " "
Affidavit " " "
Specification " " "
1 drawing " " "
Model " " "
Cert. dep.
1. Cash, $30.
Examined L. D. Gale, 27th Feb., '52.
2. Issue R. C. M., March 16, '52.
4. Patented Mar. 30, 1852.
Recorded, vol. 47, page 629.

Reported to exam'r Jan. 23, '52.
R't'd. spec. for mod. cls., Jan. 26, '52.
Letter to appl'r Jan. 29, '52.
Reported to exam'r Feb. 24, '52.
Dupl. dr. required Feb. 27, '52.

283 *Complainants' Exhibit.—Pagett's rejected application, Jan. 22d, 1852.*

The U. S. Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the file of this office of the specification and drawing in the matter of the application W. F. Pagett, January 22d, 1852, and rejected. For improvement in cultivators.

In testimony whereof, I, Ellis Spear, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this tenth day of January, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundredth.

[L. S.]

ELLIS SPEAR,
Acting Commissioner.

Be it known that I, Washington F. Pagett, of Stone Bridge, in the county of Clarke, State of Virginia, have invented a new and useful improvement on the cultivator, and I do declare that the following is a full and exact description of the construction and operation of
284 the same, reference being had to the annexed drawings, making a part of this specification, in which Fig. 1 is a top or plan view, and Fig. 2 is an elevation. A is the beam and centre piece; B is a shorter piece on the right side of A; C is a corresponding piece on *on* the left side of A; D and E are braces; F F, the handles; G is a brace between the handles; H is the right hand tooth; I the centre tooth, and J is the left hand tooth. A, B, and C compose the frame, and are confined together in front by three screw bolts. The distance between these bolts will govern the position of the teeth in changing,

and should be about nine inches. The other ends of A, B, and C have screws formed on them, and are kept firm by braces D and E. The teeth H, I, J are about fourteen inches long, of the usual shape at the lower end, but at the upper end are formed or constructed with a mortise passing through them in such direction and of such shape as to suit the shape, inclination and position of the piece or frame to which they are or may be attached. The pieces fitting the mortise neatly and are kept fast by keys or some equivalent. By taking off the tooth I, and moving the teeth H and J forward, the cultivator answers the purpose of a double shovel; by moving the side piece C forward the position of the teeth are so changed as to answer the purpose of a triangular plough. In this case the brace E must be reversed, and will fit on the centre piece A, but will require a taper washer to make a perfect fit under the tap which secures it to side piece C. By taking side pieces B and C off, the cultivator answers the purpose of a single shovel. In this case a wider tooth or shovel may be used. The handles are formed by bending double a bar of iron about six feet long, three inches wide, and

(Here follows diagram marked page 284.)

285 three-eighths thick; in the fold about three and a half inches from the centre a block of iron is riveted of the thickness of the beam A. Thus a clip or *loupe* is formed in which the beam is made fast by a key, the bar is gradually opened and turned back from the block with a taper terminating in shanks pass through the ends of brace G (which is about two feet ten inches long), and receive hand-pieces of wood. The cultivator, with or without the change proposed, is designed to cultivate small plants of every description, and corn from its springing up to its maturity. As it stands in figure 1, it answers well to plough grain sown broadcast.

What I claim as my invention, and desire to secure by letters patent, is the arrangement for, or principle of changing, the construction of the upper end of the teeth, the application of the same to harrow and drill teeth, also the manner of attaching them to the frame, as the same are herein fully described, together with their operation; the invention of the common cultivator is of course disclaimed.

WASHINGTON F. PAGETT.

Witnesses:
SAM'L P. BELL.
BYRON DENSMORE.

286 *Respondents' Exhibit A.—Contract between Slemmons and Laizure.*

This instrument, made this 14th day of July, 1855, by and between Mathew G. Slemmons and Elijah Laizure, of Cadiz, Ohio, witnesseth: That said Slemmons, in consideration of twenty seven dollars and fifty cents, to him in hand paid by said Laizure, and for the further consideration hereinafter mentioned, agrees hereby with said Laizure that if the said Slemmons shall obtain letters patent for a new and improved double-shovel plough of iron and steel, upon his application, hitherto made for that purpose, or upon any application which he may hereafter make for such letters patent for such improvement, he will immediat ly upon the receipt of such letters patent guarantee and secure to said Laizure one equal half of the entire right and interest therein of him, the said Slemmons; and the said Laizure further, in consideration of the premises, hereby agrees with the said Slemmons to furnish one-half

of the future expenses which said Slemmons may incur in attempting to procure such patent, and, if no patent be obtained, said Laizure loses the money hereinabove mentioned as paid in hand, and also his share of such money as he may hereafter advance for the procuration of such letters patent.

Witness our hands and seals this day and year above written.

M. G. SLEMMONS. [SEAL.]
E. LAIZURE. [SEAL.]

287 In the United States circuit court, district of Kentucky. In equity.

W. W. LEGGETT ET AL.
vs.
B. F. AVERY ET AL.

In rebuttal of testimony taken under supplemental answer.

Testimony of Elijah Laizure.

Depositions taken before me, J. M. Garvin, a notary public in and for Harrison County, Ohio, duly commissioned and qualified, on the 27th day of February, 1877, at my office in Cadiz, in said county, pursuant to the consent and agreement of the parties, to be read in evidence in behalf of the plaintiffs in a cause pending in the United States circuit court for the district of Kentucky, in which W. W. Leggett et al. are plaintiffs, and B. F. Avery et al. defendants.

Present, W. W. Leggett, esq., on behalf of plaintiffs, and Arthur Stem, esq., on behalf of defendants.

ELIJAH LAIZURE, of lawful age, being by me first duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Elijah Laizure, and am the same man who testified heretofore for the defendants in this case.

288 Q. 2. Please state whether you and Mr. Slemmons sold double-shovel iron plows of the character in dispute in the country between here and Cambridge and Barnesville; if so, how early?

A. I have taken them out to Moorefield; we sold plows in Moorefield; we also sent them on the Cambridge hack. I can't just state the time, but it was about 1853 and after that.

Q. 3. Did you ever hear of any such plows being made or sold at Smyrna, Harrison County, prior to the time that you made and sold your plows?

A. No, sir; never.

Q. 4. If any such plows had been made or sold at Smyrna prior to that time, do you think you would have known of it, or heard of it?

A. I think I would. I passed through that town often, and a young man worked for me who lived in that town—Jonathan Dick.

Q. 5. When did you first hear that any one ever claimed to have made such iron plows at Smyrna?

A. Last week; I believe you told me first.

Q. 6. If plows like yours had been made and sold at Smyrna in 1848, '49, '50, '51, and '52, before you got up such plows here in Cadiz, would you or not have known of it?

A. Yes, I would have known it.

Cross-examined:

Q. 7. What was the nature of the business which led you to pass through Smyrna often, as you have stated?

A. Going to my wife's father's once every two years: I don't know—a dozen times.

Q. 8. Where did your wife's father live?

A. Granville, Licking County, Ohio.

289 Q. 9. How did you usually go, and how long did it usually take to go or come?

A. Went in a carriage; it would take mostly three days; it was about one hundred and ten miles.

Q. 10. Did you usually have occasion to stop at Smyrna, or did you simply drive through?

A. Well, I think in 1852 I came in the hack from Cambridge to this place—the first State fair that was held in Ohio—I stopped there at Smyrna. I recollect of being in the smith-shops there. I always went to see the improvements, if there was any.

Q. 11. As a general thing you simply passed through Smyrna, did you not, without stopping for any length of time?

A. Well, I might have passed through without stopping sometimes.

Q. 12. On what other occasions, besides that of 1852, did you stop at Smyrna?

A. Well, I can't recollect on what occasions, but I have been there often, in Smyrna, in the hack.

Q. 13. What did you go there for?

A. Well, I can't just tell; I passed through there; and when I was peddling plows I was all over this country at different times.

Q. 14. When did you begin peddling plows?

A. Well, I think we peddled the wooden plows in 1849, 1850, probably in 1851.

Q. 15. Did you, yourself, take these plows to Smyrna to sell?

A. Well, I don't know whether I did or not. I have taken them to Coshocton, and through that country there, and to West Lafayette.

Q. 16. How long were you in Smyrna when you stopped there in 1852?

290 A. Can't recollect just the length of time. I recollect being in the smith-shops there looking around.

Q. 17. Were you there more than a day?

A. Never was there a day at a time.

Q. 18. How did you go there on this occasion?

A. I was coming from the first State fair at Cincinnati, in the stage. That is, I came from Cambridge here in the stage.

Q. 19. How long a ride in the stage was it from Cambridge to Cadiz?

A. They run through in a day.

Q. 20. Did you not stop at Smyrna for dinner?

A. Don't recollect about that.

Q. 21. You came through from Cambridge to Cadiz in one day, did you?

A. Yes; it has been done every day since, too.

Q. 22. How far is Cambridge from Cadiz?

A. Forty-two miles.

Q. 23. You do not recollect any other occasion when you stopped at Smyrna, do you?

A. I can't just recollect as well as I can that time. I have been there frequently, though.

Q. 24. Do you recollect any time when you stopped in Smyrna over an hour previous to 1852?

A. I don't.

Q. 25. Did you know a Mr. Gilmore, a blacksmith, in Smyrna?

A. Well, I don't know that I had any acquaintance with him; the name is familiar; I don't think he was a blacksmith at that time, if he was only fourteen years old.

Q. 26. Who said anything about his age?

A. Well, I understood from some of these gentlemen that that was his age about 1848 or 1849.

291 Q. 27. Which gentlemen do you refer to?

A. Mr. Leggett.

Q. 28. Did he give you any further particulars in regard to him; if so, what?

A. I don't recollect any further, unless it was some testimony he had given some place, or something of that kind.

Q. 29. You were pretty well acquainted with the blacksmiths through the country, were you not?

A. Yes, I think I knew all of them, and more too; I used to think I knew everybody in the county.

Q. 30. But you did not know a Mr. Gilmore, blacksmith at Smyrna, did you?

A. Well, I don't know that I had any acquaintance with him; the name is familiar there.

Q. 31. You would have been apt to know him, would you not, if he had been there?

A. Well, I might have known him twenty five years ago, but can't just recollect him now.

Q. 32. Were you ever in his shop at Smyrna?

A. I can't say whose shop I was in there. I was in a blacksmith shop, but I don't know whether it was Gilmore's or not.

Q. 33. When were you in a blacksmith shop there?

A. Well, I think it was in 1852—that I came from Cambridge here.

Q. 34. That was the day that you rode forty-two miles in the stage, was it not?

A. I think so.

Q. 35. Did Mr. Leggett tell you that Mr. Gilmore was born in 1833; if so, how old would he be in 1852?

A. No; he would be about 19 years old.

292 Q. 36. Did you ever sell any iron or wooden double-shovel plows at Smyrna before 1853?

A. Well, I can't recollect about that.

Q. 37. If, then, you do not remember of ever stopping in Smyrna more than an hour, or being in Mr. Gilmore's blacksmith shop, or selling any plows at Smyrna prior to 1852, is it not possible that Mr. Gilmore might have made and sold two or three iron plows previous to this time without you, who live in a distant part of the county, and who passed through Smyrna only on rare occasions, and then never to stop more than an hour, knowing of said two or three plows?

(Objected to, as the witness, James Gilmore, testified that he made them every year from 1848 to 1853 inclusive, and made as many as twenty-five plows—half of which were like the plows in controversy.)

A. I think it is not possible—them iron plows.

Q. 38. What time of the year were you in Smyrna in 1852?

A. In the fall—September—latter part.

Q. 39. Do you remember a single occasion when you were in Smyrna prior to 1852?

A. Well, I think I was there hunting a horse prior to 1852, and I was there a dozen times before that.

Q. 40. In what year were you hunting this horse?

A. I can't tell about that, but it was a good while before 1852; probably in 1840.

Q. 41. Do you remember a single occasion when you were in Smyrna between the years 1847 and 1852?

A. Can't remember the particulars, any more than that every two years, from 1835 to about 1852, I passed through there twice.

Q. 42. Then the only occasion upon which you stopped in Smyrna
293 for as much as an hour, between the years 1847 and 1853, was in the fall of 1852—the day you rode forty-two miles by stage, was it?

A. I don't know that there was any other time.

Q. 43 What time in the year did you usually make your visit to your wife's father?

A. In the fall.

Q. 44. What time in the year are these double-shovel iron plows used?

A. From the last of May to the last of October; more from the last of May to the last of July.

Q. 45. They are designed more particularly for cultivating corn and potatoes, are they not?

A. Yes, and they are used for plowing in wheat in the fall. Farmers generally finish plowing corn and potatoes by the 1st of July.

Q. 46. What time in the year do blacksmiths generally make up their stock of double-shovel plows?

A. It is generally done in the spring, unless a man is going to put up a big stock; then he commences in the winter.

Q. 47. If, then, these plows are usually made and more generally used in the spring and summer, and you passed through Smyrna once in two years, in the fall, stopped there in September, 1852, not more than an hour, visited a blacksmith shop, and don't know whose it was, do you regard it as impossible that a few of these plows were made and sold prior to 1853 without your knowledge?

A. I do, unless we sent them there from here. I don't think a man in the United States made them prior to that time.

Q. 49. You are the inventor, are you not?

(Objected to as not in cross-examination of anything elicited in the direct examination, and as re-opening an issue which was
294 closed, and was not embraced in the amended answer under which this testimony is taken.)

A. The question (the iron double-shovel plow) originated with me, and myself and Slemmons went to work and made them at the same time.

Q. 49. You are equally confident, are you not, that they were not made in Connecticut prior to 1852?

A. Well, I am; or any other State.

Q. 50. Then you have founded your belief that they were not made in Smyrna upon your strong conviction that you were the first inventor of them.

(Same objection as above.)

A. Yes, sir.

Q. 51. When did Jonathan Dick work with you?

A. I can't tell you what year; if I had my book, I could tell.

Q. 52. Please produce your book and answer the question.
(Recess was here taken for dinner.)
A. I have looked for my book, but cannot find it.
Q. 53. Was it before 1853?
A. Well, I can't state whether it was or not.
Q. 54. What was the earliest date that you can remember of his being with you?
A. Can't remember.
Q. 55. How long was he with you?
A. Can't tell.
Q. 56. Was he with you prior to 1860?
A. I think he was.
Q. 57. While he was with you, what kind of work did he do?
A. Everything that we do; he was learning the business.
295 Q. 58. Was he in the habit, while with you, of going frequently to his home in Smyrna?
A. I think so; I can't recollect about it. The boys that were with me always went home occasionally.
Q. 59. If a man whose veracity you could not question would swear that he used a double-shovel iron plow, such as the one in dispute, in 1849, would you believe him, or would you think he was mistaken.
A. I would think he was mistaken.
Q. 60. You would reach this conclusion upon the same grounds that you have stated, namely, that you think you were the first inventor of the plow, would you?
(Same objection as to question 42.)
A. Yes.

Redirect examination:

Q. 61. If such plows had been made and sold at Smyrna prior to the time they were got up here in Cadiz, would or would it not have been a matter of public notoriety?
(Objected to.)
A. Yes; and I would have heard it, too.
Q. 62. Cadiz is located near the center of Harrison County, is it not, and is the principal place in the county, and the center of its trade?
A. Yes; it is near the center. It is the principal town, and the center of its trade, and was more so twenty or twenty-five years ago than it is now.
Q. 63. You were making wooden plows before you made the iron plows; did you make it a point to be thoroughly posted as *as* to all plows made in the county at that time?
A. Yes, and manufactured all the plows that were used in this country almost, not only shovel plows but breaking plows.

296 Recross examination:

Q. 64. Cadiz being the chief town in the county, the farmers and blacksmiths were likely to come here oftener than to any other one town in the county, were they not?
A. I think so.
Q. 65. A new plow introduced here would be apt to become known throughout the county more quickly than if introduced at any other place in the county, would it not?
A. Yes.
Q. 66. You and Mr. Slemmons advertised your plow, and peddled it through the county, did you not?

A. Yes. I went to Cleveland and got a cut of the plow, and got a few thousand bills struck, and scattered them all over the country.

Q. 67. How soon do you suppose your plow became generally known and used in distant parts of the county?

A. Six or seven years before the patent came out. It was used a little too much.

Q. 68. How many plows do you suppose you and Slemmons made in 1853?

A. Well, I can't recollect how many; I have no idea.

Q. 69. Do you suppose you made five?

A. I think we made a business of it. I think we were through with the wooden plows then, and made the iron plows, but how many I can't tell.

Q. 70. How long after 1853 do you suppose it was before the plows made by you and Slemmons were known and used generally within a range of twenty miles from Cadiz?

A. Well, I think it wasn't very long; for wherever they would see our plows people would go to making them; there was no patent on them then.

297 Q. 71. How large was Cadiz then?

A. About as big as it is now; not far from it.

Q. 72. Smyrna is one of the smallest places in the county, is it not?

A. Among the smallest; there are two or three places smaller.

Q. 73. It is on the extreme edge of the county, is it not? and part of it in Guernsey County.

A. Yes.

Q. 74. Events transpiring in the center and principal town of the county, to which people come from all parts, would be known throughout the county much earlier than events transpiring in a remote and insignificant portion of the county, would they not?

A. Yes.

Q. 75. Please state the means you adopted for keeping yourself posted as to the improvements made in plows throughout the county prior to 1853?

A. A part of my business was making plows and making improvements in plows.

Q. 76. Did you use any means to ascertain what improvements were being made in different parts of the county; and if so, what?

A. Well, the most means that I have been using is—I have been taking the Scientific American for twenty-five years, and know all the improvements in all kinds of implements. Sometimes I was traveling around, and sometimes I was not. If there is any improvements in different parts of the county, some person comes along and tells about it.

Q. 77. In cross-question 23, you say you think you knew all the blacksmiths in the county. Who was the blacksmith at Moorefield at that time—prior to 1852?

298 A. I think Geo. Caves, and a man by the name of Kennedy.

Q. 78. Who at New Athens?

A. Daniel Garven and Joseph Elliott.

Q. 79. Who in Smyrna?

A. I can't say for certain; I think there was a Dick worked there, but I don't remember.

Q. 80. Who in Franklin?

A. Thomas Richards.

Q. 81. Who in Bowerston?

A. I think that town has been laid out since that time.

Q. 82. Who in New Jefferson?

A. Ryder and Woodburn.

Q. 83. Can you swear that these men all worked at blacksmithing in these towns before 1852, or are you testifying from a general impression that these men worked there a good many years ago?

A. It's my impression they did work there before 1852. I have been here forty-four years and upwards, and have been the leading mechanic and smith in the county, and have done what has been termed the "cream" of the work—the best class of work in the county; not only in the county, but out of it a good deal—edge tools, plow work, wagon work, etc., etc.—the best work done in the county.

Redirect examination:

Q. 84. Did you, or not, prior to 1853, have agents, such as peddlers, &c., selling your plows throughout the country, and, if so, was, or was not, that one of the means by which you were kept posted as to plows made elsewhere in the county?

(Objected to as incompetent, no new issues having been introduced in cross-examination, and as leading.

299 A. No, I think that was not a means; I know from people coming here to get them that were manufactured.

Recross-examination:

Q. 85. Then your only means of knowing what was going on in different parts of the county was what people told you that came to your shop to buy plows, was it not, and what you heard in such incidental ways?

A. Probably there were some other ways I can't name, but that was a part of it, of course.

(Signed) ELIJAH LAIZURE.

Testimony of Reuben A. M'Cormick.

REUBEN A. MCCORMICK, of Cadiz, being produced and duly sworn, deposes and says:

Q. 1. What is your name, age, residence and occupation?

A. My name is Reuben A. McCormick; age, thirty-seven last June; residence, Cadiz; occupation, proprietor of livery stable.

Q. 2. Where were you born and raised?

A. I was born six miles from Smyrna, and lived there until the fall of 1868

Q. 3. Were you acquainted with the Gilmores, blacksmiths there, prior to 1852?

A. No.

Q. 4. Did you know that there was such a blacksminh at that time at Smyrna?

A. I have heard of the name, but I did not know the blacksmith at all; the name Gilmore is familiar to me, but I had no acquaintance with the man.

Q. 5. Do you recollect when the first double-shovel bent beam iron plows came into that section of country; if so, what place was understood to be their origin?

300 A. I recollect the circumstance of their coming in, and Cadiz was credited with their origin; my father used the plows and had two of them.

Q. 6. Did you ever hear of such iron double-shovel plows being made in Smyrna prior to that time.

A. No.

Q. 7. Were they, or not, regarded at that time as a new thing?

A. Yes, sir; they were.

Q. 8. If they had ever, prior to that time—they came from Cadiz—been made and sold at Smyrna, would you have known of it?

A. Yes, sir; I think I would.

Q. 9. Is there any doubt in your mind upon that point?

A. No, sir; I think not.

Cross-examination:

Q. 10. How were you engaged before you left your residence six miles from Smyrna?

A. I was engaged in farming and stock-raising.

Q. 11, What did you call the place where you lived?

A. Washington Township; our post-office was Freeport.

Q. 12. What kind of stock were you engaged in raising?

A. Sheep, cattle, horses, &c.

Q. 13. What was your market for this stock?

A. My father was a farmer and stock-dealer; he attended to all that up to 1862.

Q. 14. In what year were you born?

A. 1839.

Q. 15. How was your time employed between the years 1847 and 1850?

A. Principally on the farm and on the road with stock with my father.

301 Q. 16. Do you remember how old you were when you first began to do general farm work?

A. I was doing that kind of work since I was old enough to do anything; I can't give the exact age I was when I first began to do plowing or first took hold of a plow.

Q. 17. Do you suppose it was before you was twelve years old?

A. I think it was; I think I plowed before I was twelve years old. I was set at it pretty young—both double and single plowing.

Q. 18. Was there anything in your or your father's business to take you frequently, while a boy of ten or twelve years of age, to the town of Smyrna?

A. I frequently passed through the town with my father driving stock; I was frequently there on business of my own after I was about fifteen or sixteen years old.

Q. 19. There was nothing in Smyrna itself likely to take you there before you were fifteen or sixteen years old, was there?

A. No.

Q. 20. Had you any personal or business connections at Smyrna prior to 1854 and 1855; that is, when you were fifteen or sixteen years old?

A. No; I never transacted any business in town that I know of particularly.

Q. 21. Freeport, your post-office town, was the place you transacted what business you had to do, was it not?

A. Yes, that was our place of dealing principally.

Q. 22. Did you know anybody in Smyrna at all intimately before 1854?

A. I did. I knew the Widow Ford and her daughters.

Q. 23. Before 1853, did you?

A. I don't know that I did have any particular acquaintance with anybody.

302 Q. 24. It is not surprising then, is it, that at the age of twelve or thirteen years you should not be aware of the improvements made in plows by a blacksmith in a town in which you knew nobody in particular and never transacted any business?

A. I would answer this way: That any improvements that were made in any farming implements in any of the towns about the country my father generally had if he thought they were worth anything.

Q. 25. Then you think that they could not have been made in Smyrna prior to 1853, because you did not see or hear of them, or your father did not have one before you were twelve or thirteen years old?

A. Well, it may be possible, but I don't think it likely.

(Signed) REUBEN A. McCORMICK.

Testimony of Wm. L. Houser.

WM. L. HOUSER, being called and duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Wm. L. Houser; my residence, Cadiz, Ohio; my age, forty-eight years; occupation, livery man.

Q. 2. Were you acquainted with a blacksmith by the name of Gilmore at Smyrna, Ohio? If so, please state the circumstances of such acquaintance.

A. Yes. Well, in 1848 I was carrying the mail between here and Cambridge. I was in his shop very frequently. The post-office was next to Gilmore's shop, and when it was not cold I was in there every day during the year. I knew the boy better than I did the old gentleman. The old man was there nearly every day, and I saw him frequently. The first time I carried the mail I carried it nearly three years;

303 then I came to Cadiz and worked at the hotel about eighteen months. There was a man by the name of Abram Johnson got the contract at the next letting. I drove for him about two years; then I quit. The new contractors took possession on July 1st.

Q. 3. Then, from your last answer, it appears that you began carrying the mail in 1848 and carried it until some time in 1850; then was at Cadiz until July 1, 1852, when the new contract was let, and then drove for Abram Johnson about two years, or until some time in 1854, is that correct?

A. I think that is right.

Q. 4. Did you ever see or know of or hear of an iron double-shovel plow, made by the Gilmores, or at their shop in Smyrna?

A. No; I never did.

Q. 5. If they had made them in the years that you were carrying the mail would you have known of it?

A. I think I would.

Q. 6. Were you frequently in the shop; and, if so, what would cause you to be there?

A. Yes. Sometimes I would be getting a shoe tightened; sometimes I would want to get a bolt, and sometimes went just because I was acquainted. I would go there rather than in the post-office, because the post-office was in a private house, and sometimes there was no one in the post-office but a woman, and I would rather be with the men.

Q. 7. Did you ever take the iron double-shovel plows from Cadiz to a place near Smyrna? If so, when first, and to whom?

A. Yes. It was in the second year of my last carrying the mail, and that was in 1853, before they commenced working corn. I took them

to Brandus Bethel's—two of them. I took them from Matthew Slemmons' shop in Cadiz.

304 Q. 8. Were they or not, so far as you know, a new thing at that time?

A. I think they were.

Cross-examination:

Q. 9. Where were you born and raised?

A. At Cadiz.

Q. 10. Did you ever live on a farm or do much farm work before you went to stage-driving?

A. I never did any.

Q. 11. How old were you when you began stage-driving in 1848?

A. If I live till the sixteenth day of July next, I will be forty-nine years old. I would have been twenty years old, then, in 1848.

Q. 13. Are you positively certain that you were twenty when you began stage-driving?

A. If my calculation is correct I must have been twenty. My idea was that I wasn't that old; but if the calculation is correct, I must have been that old.

Q. 14. Question repeated.

A. I expect I was twenty years old.

Q. 15. Question repeated.

A. I will say that I was twenty years old.

Q. 16. Are you positive of that fact?

A. To the best of my knowledge.

Q. 17. Please repeat the circumstances that you have just stated as leading you to believe that you were not so old.

A. Well, the reason I thought so was this: I wore a short round-about, as you call it, during the time that I was carrying this mail.

Q. 18. How do you fix the dates.

305 A. Well, I know that our company, called the Cadiz Company, started from here to California, and that was in 1849; and I commenced carrying this mail the fall before; they went away in the spring.

Q. 19. Have you no papers or books to show the date when you began driving the mail-coach between Cadiz and Cambridge? first

A. I don't think I have.

Q. 20. What have you to show that it was not your second engagement as mail-carrier that began in 1848, since you wore round-abouts when you began the first?

A. I don't know as I have anything only my recollection; I was working for other parties, and had no use for books.

Q. 21. Can you swear positively that it was not this second engagement which you began in the fall of 1848?

A. I think I can.

Q. 22. Is a boy raised in town, who never lived on a farm, engaged in stage-driving, very likely to be a careful observer of improvements made in agricultural implements?

A. Will, in a general way, I don't think they are; but when this plow was made, there was considerable talk about it; that was the way I came to know what I do know about it.

Q. 23. Was not this talk principally upon the question as to whether Laizure or Slemmons invented the plow and which should have the patent on it?

(Objected to as incompetent under the amended answer, upon which this proof is taken.)

A. Well, there was some talk of that kind, and some other talk was about the improvement over the old wooden plow.

Q. 24. You mean the improvement on the plows made by Laizure & Slemmons over the old wooden plows, do you not?

(Same objections.)

306 A. Yes.

Q. 25. When did that talk occur?

(Same objections.)

A. I think it was about the time they commenced making them; shortly after it was common bar-room talk.

Q. 26. When was that?

(Same objections.)

A. I could not tell the year, not the precise time.

Q. 27. Where was this talk principally?

A. I believe that what I heard I heard at the hotel; it was right across the street from Slemmons' shop, and Slemmons was talking about it. Slemmons was frequently in there.

Q. 28. If Slemmons & Laizure began making these plows in 1852 or 1853, the talk that you heard about them subsequent to that time would hardly affect the carefulness of your observations made in 1848 and '49, would it?

A. Whatever time the talk was, that was when my mind was brought to this matter; of course I was not interested in it, and I did not pay particular attention to it.

Q. 28¼. Previous to hearing this talk, you had thought nothing about the matter, had you?

A. No.

Q. 29. Please describe accurately the plows you carried from Mr. Slemmons' shop in 1853 or '54?

A. I think they were iron plows, called corn cultivators. I don't believe I can describe them.

Q. 30. How long a stop did you usually make at Smyrna?

A. From seven to ten minutes, ordinarily.

Q. 31. And up to 1854 you were not likely, considering that you had never been on a farm, to notice or recognize improvements made in farm implements, unless your attention was particularly called to it, were you?

307 A. I think not.

Q. 32. If, then, your usual visits to Gilmore's shop were for only from seven to ten minutes, and you were not, as you say, likely to notice improvements in farm implements, is it not probable that Mr. Gilmore might have made and sold a few plows of a new character without your noticing them?

A. It is not impossible, but I never saw any there. I don't think his shop was more than ten by twelve feet in size, and had there been anything there of that kind I think I would have seen them. I have noticed the wood-work of wagons and wheel-barrows that were there for him to iron, but I never saw any plows.

Q. 33. Do you remember whether these wagons were skilfully ironed or not?

A. No, I don't remember.

Q. 34. As a stage man, you would be more apt to notice the character of wagon-work than of plows, would you not?

A. I expect I would.

(Signed) WM. L. HOUSER.

Testimony of Wm. B. M'Fadden.

Also WM. B. MCFADDEN, of lawful age, being by me first duly sworn, according to law, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Wm. B. McFadden; I am forty-four years old; my residence, Cadiz, Harrison County, Ohio; my occupation—am at present a grain dealer.

Q. 2. State where you were born and raised?

A. I was born about two miles from Cadiz, and was raised within six or seven miles of Smyrna; it was about 1845 when we moved to Nottingham Township, within six or seven miles of Smyrna, and remained there until September, 1873.

308 Q. 3. Did you know the Gilmores, who were blacksmiths at Smyrna, prior to 1854?

A. I knew there were Gilmores there, but don't know the names of those who were blacksmiths.

Q. 4. Were you, or not, frequently in Smyrna, and through the adjacent country?

A. Yes, was buying stock.

Q. 5. Did you ever know or hear of iron double-shovel plows being made at Gilmore's shop in Smyrna?

A. No, I never did.

Q. 6. If they had made such plows at Smyrna, in any of the years, or in all of the years from 1848 to 1853, would you have known of it?

(Objected to as incompetent and merely speculative.)

A. I think I would; I think if they had been made there they would have been sold in that neighborhood; all the plows we got came from Cadiz; we never saw any other plow.

Q. 7. What place was credited with the first double-shovel iron plows ever known in your neighborhood?

A. Cadiz.

Q. 8. Did you or your father purchase such plows; if so, when and from whom?

A. Yes; well now, the date I can't give exactly; I think it was about 1851 or 1852, or along there somewhere, from Elijah Laizure; we bought two; both came from Laizure & Slemmons.

Q. 9. At the time you bought these plows, were they, or not, a bran new thing in that section of country?

A. They were.

Q. 10. What was your father's custom with respect to having the latest improvements in agricultural implements?

A. He would have them. He bought the first mowing ma-
309 chine that came into that country; the same way with plows; he sent to Pittsburgh for two share plows.

Q. 11. Did others in the neighborhood purchase iron double-shovel plows before your father did?

A. No; his was the first I saw in that country.

Q. 12. Why did he buy them?

A. He bought them because he thought they were a good thing.

Q. 13. Did they, or not, excite curiosity among neighboring farmers?

A. They did.

Q. 14. Did you ever hear any of them say, or intimate, that they had seen or heard of such plows before that?

A. No.

Q. 15. You say you are not positive of the date when these plows

were purchased by your father; may it not have been in 1853, instead of 1851 or 1852?

(Objected to as leading.)

A. It might; I am not positive as to the date.

Cross-examination:

Q. 16. Please go on with what you were about to say in answer to the last question?

A. By referring to some deeds—I was going to say that I could tell the date exactly, but after studying over it, I find I can't do it.

Q. 17. Why not?

A. Because the deed was not made for several years after we bought the farm.

Q. 18. What connection would the purchase of the farm have with these plows?

A. We bought it somewhere near two or three years after we bought the first plow.

310 Q. 19. When did you move on to this farm?

A. I can't tell just the date.

Q. 20. What do you think was the date?

A. Somewhere along between 1853 and 1857. I can't tell the date.

Q. 21. How does it happen that your memory has suddenly become so uncertain?

(Objected to, as the witness has nowhere attempted to fix dates.)

A. Because I don't pretend to fix the dates, nowhere.

Q. 22. Have you no means of fixing the date of so important an event as the purchase of a farm?

A. Not here.

Q. 23. Have you anywhere?

A. I might by hunting up the old deeds, if I could find them.

Q. 24. Are they not recorded?

A. I don't know whether they are or not.

Q. 25. As the recorder's office is only across the street, please examine the record, and after ascertaining, answer the last question.

(Objected to, as it is already half-past nine p. m.)

Counsel for defendants expresses his willingness to adjourn the examination until to-morrow morning, when there will be no difficulty in answering the question.

Plaintiffs' counsel says he has no objection, but suggests that the witness proceed with the answer he was about to make, and thus develop whether there is a necessity for such examination.

After making the examination, the witness says:

A. I can't find any record, nor the deed. I have consulted my father about it, and neither of us can fix the date; neither can recollect when it was.

Q. 26. While living in Nottingham Township what was your post-office?

311 A. Moorefield, sometimes Deersville, generally Freeport.

Q. 27. All of these towns were nearer to your home than Smyrna, were they not?

A. Yes.

Q. 28. Had you any business or any acquaintances to take you frequently to Smyrna between the years 1848 and 1853?

A. Nothing, only buying stock over the country.

Q. 29. Do you remember of ever being at Mr. Gilmore's shop between those dates?

A. No, I could not say that I was there between those dates.

Q. 30. Do you remember of ever being in Smyrna between those dates; if so, when?

A. No, I can't tell what date it was that I was there.

Q. 31. Were you in the habit of going to Smyrna, you or your father, to get your blacksmithing done, or do your trading, or anything of that kind?

A. No; we were not in the habit of doing our trading there—any more than buying stock through the country.

Q. 32. If, then, you had nothing to take you to Smyrna, and do not remember of being there between the years 1848 and 1853, or of ever being in Gilmore's shop, do you pretend to say that you do not believe that Mr. Gilmore might have made a few iron double shovel plows before 1853, without your knowing it?

A. I think if he had, we would have heard something about it, because we heard of them being made at Cadiz, and that was farther away than Smyrna.

(Signed) W. B. McFADDEN.

312 *Certificate.*

STATE OF OHIO,
Harrison County, ss:

I, J. M. GARVEN, a notary public in and for the county and State aforesaid, duly commissioned and qualified, do hereby certify that the above-named Elijah Laizure, Reuben A. McCormick, Wm. L. Houser, and W. B. McFadden, were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth; and that the depositions by them respectively subscribed, as above set forth, were reduced to writing, partly by myself, and (with consent of counsel for defendants) partly by W. W. Leggett, esq., in the presence of the witnesses aforesaid respectively, and were subscribed by said witnesses in my presence, and were taken at the time and place mentioned in the caption to these depositions. I do further certify that I am not counsel, attorney or relative of either party, or otherwise interested in the event of the suit. In witness whereof I hereunto set my hand and notarial seal, February 27th, 1877.

[SEAL.] J. M. GARVEN,
Notary Public.

Cost bill.

Notary, $3.50.
Laizure, $1.00.
McCormick, $1.00.
Houser, $1.00.
McFadden, $1.00.

Received of W. W. Leggett, esq., $3.50, my fees; the witnesses were paid by W. W. Leggett, esq.

J. M. GARVEN,
Notary Public.

313 In the United States circuit court, district of Kentucky. In equity.

W. W. LEGGETT ET AL.
vs.
B. F. AVERY ET AL.

Testimony of witnesses examined on behalf of the complainant in the above cause, formal notice being waived, and by consent of counsel, at Moorefield, Ohio, before Arthur Stem, notary public, and by consent, this 23d day of February, 1877.

Present, Wells W. Leggett for the complainants, and Arthur Stem for the defendants.

Testimony of John M. Bendure.

JOHN M. BENDURE, being called and duly sworn, deposes and says, in answer to interrogatories by Wells W. Leggett, as follows, to wit:

Q. 1. Are you the same person formerly examined by the defendants in this case at Urichsville, Ohio?

A. I am.

Q. 2. You swore very positively at that time as to certain circumstances relating to a double-shovel iron plow, of which it was alleged some were made in 1848, by one James Gilmore, of Smyrna, Ohio. Are you still satisfied that what you testified on that occasion was correct?

A. I am.

314 Q. 3. I now ask you whether there is not a possibility that you may have been mistaken in the date?

A. I don't see how I can possibly be mistaken in the date. It appears to me to be as plain as daylight that that is correct.

Q. 4. Question repeated.

(Objected to, witness having already clearly and positively answered the question.

Complainants' counsel replies that the witness has only expressed a firm opinion.)

A. Well, I can't see where or how.

Q. 5. Are you infallible in such a matter?

(Objected to. Witness does not offer himself as anything more than human, and has expressed himself as positive and certain.)

A. I believe it is conceded that all men are fallible under some circumstances.

Q. 6. Then you admit the possibility of your dates being in error, while you think it is improbable; is not that true?

(Objected to as leading, and containing an assumption of facts not warranted by the testimony, and objects to any further attempt to intimidate or confuse the witness.

Complainants' counsel disclaims any such intention, but merely desires to give the witness an opportunity to express himself.)

A. I do not think that I am mistaken in my dates.

Q. 7. If it should appear that Griffith never made threshing machines in Smyrna in 1848, would not that show that you must have been in error in your testimony, since you fixed it by that circumstance?

315 (Objected to as incompetent, going out of the record, there being no warrant for the assumption, and witness' evidence not depending upon the circumstance of Griffith's making threshing-machines.

Complainants reply that they expect to prove that error hereafter.

Defendants' counsel replies that, until proved, it is improperly introduced into the record to influence the testimony of the witness.)

A. I am satisfied in my own mind that he did work at that business inside those two years.

Q. 8. Question repeated.

(Objected to, witness having already answered the question to the best of his ability.)

A. If he did not make threshing-machines in those two years, of course there is a probability of a mistake.

Q. 9. Would not Jesse Romans, Geo. B. Smith, and Taylor Barge know of Gilmore's making such plows, if they had been made?

(Objected to as incompetent, witness not being able to testify as to what other men know.)

A. I do not know whether they would or not.

Q. 10. Knowing them as you do, and their prominence in that community at that time, would they not be apt to know it, if anybody did?

(Same objection.)

A. Of course they would be likely to know of such a thing, if they could remember.

Q. 11. Would not William Howlett, Wm. G. Smith, Wm. K. Smith, Samuel B. Smith, and Samuel R. Smith be likewise apt to know of it, if anybody did?

(Same objection.)

A. It is possible for them to know of it, if they could recollect.

316 Q. 12. Would not Squire Carpenter, Jonathan Dick, A. T. Hogue, David Steel, Curtis Ferrell, Henry Briggs, Thomas Green, and Andrew Steel be apt to know of it, if such plows had ever been made in Smyrna?

(Same objection.)

A. Curtis Ferrell would be likely to know something of it; the others live farther away.

Q. 13. Would not Dr. Hall and his eldest son be likely to have known or have heard of such a thing?

(Same objection.)

A. I don't think he lived in the neighborhood at the time.

Q. 14. Now I ask you again, whether it may not be possible that you were mistaken in the date fixed by you?

(Objected to as before.)

A. I do not believe I am. Such a thing might be possible, of course; but it seems clear in my mind that I am not mistaken.

Q. 15. Can you read or write?

A. I can read and write some; am a very poor scholar, though.

(Counsel for defendants, without waiving any objections, proceeds to cross examine.)

Cross examination:

Q. 16. You say that you worked for Mr. Griffith at threshing-machine business in the summer of 1848. How and where were you engaged the rest of the year?

A. I think I worked the principal part of the winter of 1848–9 at Wm. Johnson's cooper-shop; a part of the winter at least.

Q. 17. Had you not frequent occasion to be in Mr. Gilmore's shop at other times as well as while you were working for Mr. Griffith, between the years 1847–50?

317 Yes, sir; I was in, backwards and forwards, frequently.

Q. 18. Even then if Mr. Griffith did not have a shop in Smyrna until 1851 or '52, does that make you doubtful in the least as to the correctness of the date given in your direct examination?

(Objected to, as the witness has already said that he might probably be mistaken if such was the case.)

A. It does not.

Q. 19. You are positive you are correct, are you not?

A. I am positive in my mind.

Q. 20. You are also perfectly sure that you saw these plows in Mr. Gilmore's shop during the time you were working for Mr. Griffith, are you not?

A. I am.

Q. 21. Are you perfectly sure that you worked with Mr. Griffith the first year that he made threshing machines at Smyrna, and that while working for him you saw these plows at Gilmore's shop?

A. Yes, sir.

Q. 22. You might then have seen them for the first time before you went to work for Mr. Griffith, as well as while you were working with him, might you not?

A. I might have seen them that same spring that I worked for Griffith before I commenced with him.

Q. 23. You say that if he did not make threshing machines in those years, of course there is a probability of a mistake. Do you mean that you might be mistaken as to the time when you worked for Mr. Griffith, or the time when you saw the plows?

A. I do not think I am mistaken in either. If he positively did not make those plows in those two years, the mistake is probably in the time that I worked for Griffith.

318 Re-examination:

Q. 24. It is a good way back to recollect such events accurately, is it not?

A. Of course, it is several years back.

Q. 25. How many suits did you ever testify in before courts, justices, &c.?

A. I am unable to tell you. I havn't any idea.

Q. 26. In fifteen or twenty all told?

A. Oh, I suppose it would be likely to be that many times.

(These questions objected to as not pertinent to the issue, and introducing new matter in redirect examination.)

Q. 27. It may have reached as high as thirty, may it not?

A. No, sir; I haven't any idea that it is that many.

JOHN M. BENDURE.

Testimony of C. G. Kennedy.

Mr. C. G. KENNEDY, being called and duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. My name is C. G. Kennedy; my age is sixty-nine years; reside in Moorefield, Ohio, nearly five miles from Smyrna; my occupation is blacksmith since I was seventeen years of age until about ten years ago.

Q. 2. Where did you reside from 1847 to 1854?

A. In this town since fall of 1834.

Q. 3. Did you know the Gilmores, blacksmiths at Smyrna, during that time? If so, state whatever you may know about an alleged claim that Mr. James Gilmore made iron double-shovel bent beam plows there from 1848 to 1853, inclusive. Please answer in narrative form.

319 A. I knew him; was not very much acquainted with him; have met him in Smyrna; knew of his carrying on the blacksmith business, the old gentleman; I never knew or heard of their making any double-shovel iron plows; I was blacksmithing here at that time; I never knew him to make or to sell any such plows. The first I ever knew of those plows coming in this section of country were what came from Cadiz. They were then regarded as a new thing here, and attracted curiosity. They sometimes got out of order—bolt loose, or something of the kind—and they used to bring them to me for repairs. They came from Cadiz. If they had been made and sold at Smyrna during the years from 1848 to 1853, I suppose that some of my customers would have known of them, but I never knew of their bringing any to me but those made in Cadiz. I might have known of it if any such were made there, for I had a very good chance to know it. I never knew of their being made in Smyrna.

(That part of the answer of the witness objected to which pertains to what the witness does not know, evidence being what he does know, by defendant's counsel.)

Q. 4. Do you recollect of Mr. Griffith who formerly made threshing machines at Smyrna? If so, when was it that he made threshing machines there?

A. That I can't answer. I heard of his making them there, but never saw him making them. It would be mere he'resay.

Q. 5. Do you recollect when it was, with respect to the time of the California fever, when parties left Smyrna for California?

A. It runs in my mind that it was after Phipps came back that they made threshing machines there. I went there when they came back, and it was about the time they were making threshing machines, if I recollect right. I don't answer that question positively.

320 Cross-examination:

Q. 6. When did you see for the first time a double shovel iron plow?

A. Well, I can't state positively. It was some time along between 1852 and 1855, I think. I am not positive about the date or year.

Q. 7. Who made that plow?

A. I understood it was made at Laizure's in Cadiz.

Q. 8. By whom did you understand it was invented?

A. I always understood it was invented by Laizure and Slemmons.

Q. 9. Mr. Griffith might have been making threshing machines in Smyrna before you went over there upon the return of Mr. Phipps, might he not?

A. Well, sir, I don't know the year he commenced to make them, nor the year he quit. All I know is what I told you before. I was there after Phipps came back, and I think a man by name of Griffith was making threshing machines there then. I never taxed my mind with it.

Q. 10. Were you ever in Mr. Gilmore's shop?

A. I am not certain. I think I was once.

C. G. KENNEDY.

Examination continued by consent at Smyrna; same parties present and the same day.

Testimony of John Romans.

JOHN ROMANS, being called and duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. John Romans; age 45 or 46 years; residence, New Athens, Ohio; and occupation carpenter and mason.

321 Q. 2. Did you ever reside at Smyrna; if so, when, and were you acquainted with the Gilmores who were blacksmiths there?

A. I resided two miles south of Smyrna all my life until since the war, and I was acquainted with the Gilmores who were blacksmiths here, and knew James Gilmore.

Q. 3. Were you ever in their blacksmith shop, say from 1847 to 1853, when they moved away?

A. I suppose I must have been; I was in every time I was in town, or pretty near it, and I was in town from two to three times a week or oftener, that often anyhow.

Q. 4. Did you ever see or hear of the Gilmores' making any iron double-shovel plows during that period.

A. I can't say that I did ever hear of them making any of their own.

Q. 5. What place was credited with the first double-shovel iron plow that you ever saw or heard of?

A. I don't know as I could answer that question, but I think the names were Slemmons or Laizure, if I recollect right; I don't recollect the place.

Q. 6. At the time the iron double-shovel plow came into the Smyrna neighborhood, did they, or not, come from a distance?

A. Yes, sir; and they were regarded as a curiosity.

Q. 7. Before iron double-shovel plows came there from elsewhere, did you ever know of their being made in Smyrna?

A. No, sir.

Q. 8. If they had been made here in Smyrna by the Gilmore's before they had come in from a distance, would you have known of it?

A. Yes, sir; I think I would.

Q. 9 Were you intimately acquainted with Jim Gilmore; if so, how intimately?

A. Well, sir, I was very well acquainted with him.

322 Q. 10. How frequently were you with him?

A. Pretty near every time I was in town.

Q. 11. Did you ever hear of his getting up, i. e., inventing a plow?

A. No, sir.

Q. 12. If he had ever invented a plow at that time, between 1847 and 1853, and had made and sold them here in Smyrna, would you have known of it?

(Objected to as incompetent.)

A. Yes, sir; I think I would.

Cross examination:

Q. 13. Where was Gilmore's shop located?

A. On the west side of the street about the middle of the town, north of widow Johnson's.

Q. 14. Do you remember any particular occasion when you were in Gilmore's shop between 1848 and 1853?

A. No; I don't know as I do.

Q. 15. Do you remember what kind of work was done there?

A. Different kinds, I suppose; ironing wagons, horseshoeing, and such things; a general blacksmith.

Q. 16. Did they do any manufacturing?

A. Not that I know of.

Q. 17. Did he, that is, James Gilmore, iron buggies?

A. I don't know; he might have ironed buggies at that time.

Q. 18. Do you remember of James Gilmore making a new kind of jack-screw?

A. No, sir; I don't.

Q. 19. Do you remember of his making and using a new kind of oval-headed bolt for carriage work?

A. No, sir; I don't.

323 Q. 19¼. If I should prove to you that Mr. Gilmore had quite a reputation for his axes and edge tools; that James S. Gilmore took particular pride in his skill in ironing buggies, and introduced and used a new kind of oval-headed bolt, and also invented a jack-screw, would you not conclude that you did not know very much about what was going on in Gilmore's shop?

A. Frank Gilmore had such a reputation, but I never knew of Jim Gilmore's having such a reputation. I think I would say that if it had been done by James I would have known of it.

Q. 19¼. Repeated.

A. If all these things were done, I would conclude I didn't know much.

Q. 20. When and where did you see the first double-shovel iron plow?

A. Well, I can't say exactly whether it was in town here. It might have been here in town, or it might not; that is, the first one. I saw them here in town, but whether that was the first or not I can't say.

Q. 21. Do you remember when or where you saw the second?

A. No, I don't; that is too long for me to remember every little thing; it may have been here in town; I don't recollect the dates.

Q. 22. It did not make very much of an impression on you, did it, if you cannot remember when or where it was?

A. It did not impress me much just where or when I saw the first or second.

Q. 23. There might have been such plows in this part of the country some time before you noticed them, might there not?

A. I think there wasn't just in this neighborhood. I would have seen them if they had been in town or about here.

324 Q. 24. If you cannot remember when or where you first saw them, how do you know they were not about here some time before you noticed them at all?

A. Well, I suppose they were here before I noticed them, for I couldn't have noticed them till they were here; they might have been here a week or a day, or have been stored away before I saw them.

Q. 25. In answer to question 4, you say that you can't say that you ever did hear of the Gilmores making any of these plows of their own. Please explain that answer.

A. I meant of their own invention.

Q. 26. Did you ever hear of their making or selling any of these double-shovel iron plows of anybody else's invention?

A. I know that they were sold there. I don't know that they made them. It is more than likely that they did make some.

Q. 27. You know they were sold there, do you?

A. Wait till I see. Yes; they were sold there.

Q. 28. These were double-shovel iron plows, were they?

A. Yes; they were not wooden ones, anyhow.

Q. 28. Had they the beams bent down to fasten the shovels to?

A. Yes.

Q. 29. I now show you a sketch marked Defendants' Exhibit, Gil-

more's Plow, and ask you if the plows sold by the Gilmores were like it?

A. I think it was, or something near it.

Q. 30. You are sure, are you, that they had two iron beams, joined together at the front, and diverging therefrom, and bent downwards to form standards for the shovels?

A. Yes; it may not have been just exactly that shape, but that is sustantially it.

325 Q. 31. How near the front or clevis did the beams begin to separate or diverge?

A. I don't know the exact distance in inches.

Q. 32. How many inches do you think it was, six inches or four inches?

A. I can't state it in inches.

Q. 33. Do you think it was as much as eight inches from the front, or do you think it was less?

A. I think it was less.

Q. 34. You remember distinctly, do you, that these plows were sold by the Gilmores here?

A. Sold there at their shop.

Q. 35. How long before they went away should you think?

A. I can't tell you exactly.

Q. 36. You think the Gilmores sold them here as much as a couple of years before they went away, don't you?

(Objected to, as the witness says he can't tell how long it was before they went away.)

A. I can't tell you.

Q. 37. What do you think?

(Same objection, as the witness says he can't tell.)

A. I think I don't know exactly.

Q. 38. You remember the Gilmores sold them here before they went away, do you not?

A. Yes.

Q. 39. Well, do you think they were selling them for as much as a year before they went away, or was it more likely two or three years?

(Objected to, as the witness has twice said he can't tell.)

A. I couldn't tell you exactly.

326 Q. 40. I don't ask you exactly, but whether you think it more likely that they were selling them for one year before they left, or two or three years?

(Objected to, as the witness has several times said he can't tell.)

A. I can't tell you exactly; I can only answer the one way.

Q. 41. Do you know William Romans and Elias Phipps?

A. Yes.

Q. 42. Have you any reason to believe that they are not both reliable men?

(Objected to, as the reliability of the men has not been brought in question.)

A. No.

Q. 42. If they should testify that these plows were made and sold here by Gilmores as much as three or four years before they went away, would you have any doubt as to the truth of their statements?

(Objected to, as the witness is not swearing for other people, but as to what he himself knows.)

A. I answer just the same as I did before. I have no doubts of their statements; it is not mine.

Q. 44. Have you had any communication with James Gilmore since he left here?

A. I have not.

Q. 45. Do you think they sold these double-shovel iron plows as much as six months before they went away?

(Same objection renewed.)

A. I can't tell you exactly.

Q. 46. From what you recollect of the sale of these plows, should you think that they were made and sold by the Gilmores as much as two years before they went away?

(Same objection.)

327 A. Well, I can't recollect the dates; there is no use of me trying.

Q. 47. I don't ask you for dates?

A. It was some time before they went away.

Q. 48. Should you think it was as much as a year, or more or less?

(Objections renewed.)

A. I can't tell you exactly.

Q. 49. Please state what you understand me to have asked in the question 48.

A. I understood you to ask me for a thing I could not tell exactly.

Q. 50. For how long do you think Mr. Gilmore had a trade in those plows?

(Objection renewed.)

A. I can't tell you.

Q. 51. You evidently do not understand my question; should you think it was more or less than ten years before he went away?

(Same objection.)

A. I have told you that plows were sold, but I can't answer as to dates, and by dates I mean as to spaces of times.

Q. 52. Do you think anything about the matter at all as to how long it was before they went away?

(Objection renewed.)

A. Nothing certain as to the length of time. I can't gather it up now as to the length. I can gather nothing certain. I don't want to answer anything that I can't fix certain.

Q. 53. If you should attempt to think or guess at the time, would it, in your own mind, be any more apt to be right if you should fix it at one space of time rather than another?

A. I think it would be guess-work.

JOHN ROMANS.

328 Examination adjourned until 9.15 a. m., March 1st, and then resumed. Same parties present.

Testimony of Jesse Hall.

JESSE HALL being called and duly affirmed, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Jesse Hall; age, sixty-three years; residence, Smyrna; and occupation, physician.

Q. 2. How long have you lived here in Smyrna? Where did you live prior to that time, and what your occupation?

A. Have lived here since 1859; prior to that for two years or three years I lived two or three miles out of town; prior to that, and for about four-

teen years, I lived in Freeport, three and one-half miles from here, and there my main business was physician; but I had two shops, a wagon-shop and a blacksmith shop.

Q. 3. Are you a Quaker?

A. I am.

Q. 4. Please give, as nearly as you can, the origin and history of double-shovel bent-beam iron plows in this section of the country.

A. I don't recollect of seeing or hearing of any of them before they were made and came from Cadiz. I think the people regarded them as the get-up of Laizure, of Cadiz; that was the talk; he was a blacksmith there at Cadiz. After that we made a few in our shop at Freeport. I wouldn't be certain whether other blacksmiths there also began making them or not; I think it is likely they did.

Q. 5. Were you acquainted at the time with the Gilmores, who were blacksmiths here at Smyrna; if so, did you ever hear of their making and selling such plows before the Cadiz plows came into this country?

A. I was not personally acquainted with him. I frequently passed his shop. He was regarded as a good blacksmith. I have
329 no recollection that they did. My recollection does not serve me as to whether they did or not make and sell them before they came from Cadiz.

Q. 6. If they had made and sold such plows before the Cadiz plows were made would you have known of it?

(Objected to as speculative.)

A. I expect I would have been uncertain anyhow, as I was only attending to my own business.

Q. 7. What place was credited with the first such plows that you ever heard of?

A. I don't now recollect of hearing any other place but Cadiz.

Q. 8. Were they at that time regarded as a novelty in the neighborhood?

A. It was taken into account as something new and strange, I believe, and thought to be a profitable invention.

Q. 9. If they had been made and sold here at Smyrna in each of six years before they were ever made at Cadiz, would you have known of it?

(Same objection, as speculative.)

A. It is most likely I should, I think—if they had attracted the neighborhood attention I would sure.

Q. 10. Did you ever hear of the Gilmores getting up such a plow?

A. I don't remember of ever hearing anything of that kind.

Q. 11. Did you ever hear of the Gilmores making any such plows at any time either before or after they came from Cadiz?

A. I don't know as I did, except about the time they came from Cadiz there was a considerable stir about the plows, but I don't know who were engaged in it particularly.

Q. 12. Please explain what you mean a little more fully.

330 A. If there was any other plow except the Cadiz pattern I never knew about it.

Q. 13. When you say others engaged in making them, what do you mean?

A. That others then took hold of it a little—that is of the same pattern—and made some.

Q. 14. State whether or not you were engaged in making plows at Freeport.

A. Yes, we made plows—principally wooden ones, but a few of them iron ones.

Q. 15. At that time was there any talk that you might be stopped from making the iron plows; if so, by whom?

A. There was a suspicious feeling amongst the people that the Cadiz folks might probably come on us.

Q. 16. Do you remember whether other blacksmiths at that time, at Freeport and in neighboring towns, expressed themselves as fearful that the Cadiz people might come upon them for making the plows?

A. I couldn't say who started the talk, but it was generally talked that Laizure might come upon them. I don't know as it was more blacksmiths than other folks.

Q. 17. Was it not a fact that after the Cadiz plows came out, blacksmiths generally in the country towns thought the plow was a good thing, and started to make them?

A. That is my opinion.

Q. 18. What were your facilities for being posted as to what was done at that time in the plow business at Smyrna?

A. It was very slight; I paid little attention to it. I might have heard that plows of the kind were made here, but Gilmores are entirely out of my mind when I try to connect them with the plow business. I was here very frequently, and passed their shop.

331 Cross-examination:

Q. 19. When did you first see these iron double shovel plows, and when did you begin making them?

A. My impression is that it was somewhere between 1850 and 1854 that I first saw the plows. I would not be definite: that is as near as I can fix the date. It might not have been long after we first saw them that we first began to make them. It might have been half a year, or a year, or two years—I don't think it could have been so long as two years after.

Q. 20. You think it probable, then, do you not, that you made them as early as 1852?

A. I shouldn't wonder; somewhere thereabouts, I should think that we did.

Q. 21. When did you move away from Freeport?

A. In 1855, and I had quit the shop about a year before that.

Q. 22. Is it not probable that you began making these plows two or three years, as much as two anyhow, before you gave up your shop?

A. I believe that was so.

Q. 23. Do you feel pretty certain about that?

A. Well, I feel satisfied that we did now and then make an iron double-shovel plow for a space of two years before giving up the shop. I think that is correct.

Q. 24. Who did you understand invented these Cadiz plows?

A. I don't now recollect of hearing of any other name than Laizure's; there might have been, however, but I think they were called the Laizure plow.

Q. 25. If Mr. Laizure claimed them as his invention, and advertised his claim, and threatened to sue infringers, that would fix the matter in your mind much more strongly than if Mr. Gilmore had made a
332 few plows, even several years earlier, but had not claimed a patent on them or advertised them at all, would it not?

(Objected to, as witness has not said that Laizure claimed them or advertised them, or threatened to sue, but that they feared the Cadiz people would come on them.)

A. In regard to that matter, I do not remember of seeing or hearing of any such advertisement, &c., but there was a rumor in the neighborhood that Laizure might do so. I suppose it would have impressed my mind more, because I heard of such claim by Laizure, but never by Gilmore.

Q. 26. Isn't it probable, then, that at this distant day you would associate the plows more with Laizure's name than Gilmore's?

A. I think I surely would.

Q. 27. Isn't it very possible, then, that Gilmore made a few of these plows, say one or two, as early as 1848 or '49, without your remembering it?

A. Well, if he did make them, he made them without my remembering it, for I certainly don't remember it. I don't see why it would be *impossible*, but I don't remember it. He *could* do such a thing without my knowing it, I reckon.

Q. 28. Were you ever in Gilmore's shop?

A. Don't remember that I ever have been, to any certainty. It is not unlikely, but I can't now fix it that I did.

Q. 29. Are there many of the citizens who lived here at that time who are still living here?

A. Very few, that were then grown up.

Q. 30. Do you remember any that are living in town now?

A. I do not, except Elias Phipps. Most of them have either died or gone west.

333 Redirect examination:

Q. 31. Please state whether the following were then living in this neighborhood, and whether they are men who would be likely to know of it if Gilmores had made such iron double-shovel plows in Smyrna years before, or at any time before the Cadiz plows were brought here into this neighborhood: Thomas Briggs, Jonathan Dick, A. T. Hogue, Geo. B. Smith, Jesse Romans, Taylor Barge, Samuel B. Smith, Samuel R. Smith, Wm. K. Smith, Wm. G. Smith, Wm. Hollett, Curtiss Ferrell, David and Andrew Steel, Squire Carpenter, and John Niblick.

(Objected to, the witness being called to testify as to his own knowledge, not to what other can testify.)

A. They then lived within four miles radius around Smyrna, except David Steel and Andrew Hogue, who lived six or seven miles distant. They are men of veracity. I don't know any reason why they shouldn't know, nor any particular reason why they should. They might not be observant, might be careless about what they know.

Q. 32. Do you know of anybody who would be any more likely to know—were they not prominent farmers and agricultural men?

A. Don't believe I know others who would be more likely to know. They now are prominent farmers and agricultural men; some were young then. I myself came to this town of Smyrna in 1858, I think. I have lived in the neighborhood since 1842. When I moved from Freeport in 1855, I went to Birmingham, over ten miles from here and lived there about a year, then moved to Antrim, seven miles west of here, and moved from there here in 1858.

334 Redirect examination:

Q. 33. How many dwelling houses are there in this town now?

A. Twenty-four in all.

JESSE HALL.

Testimony of Samuel R. Smith.

SAMUEL R. SMITH, being duly affirmed, deposes and says, in answer to questions by W. W. Leggett (and by consent in narrative form), as follows:

I am nearly forty-four years of age; was about the same age as James Gilmore. I am a farmer. I recollect the Gilmores when they were blacksmiths here. They lived in Smyrna and I lived here, two miles and a half from Smyrna. I frequently had work done there at their shop. I never recollect of their making double-shovel iron plows. I don't know as I can tell what place was credited with the first that came here. I don't recollect. I think Pittsburgh, but I won't say positively. I knew they came here from a distance, before they were ever made here, and they were then a new thing in this country. I was very frequently in Smyrna, and average twice a week at any rate, and I think they could not have been made in Smyrna by them without my knowing of it; we would have got them if they had been made there. My father was the one that had the work done, and principally at Chandler's shop, opposite the street from Gilmore's square across the street. I was then a young man living with my father on this place; was born and raised on this place. I never heard of Gilmores getting up a plow until a short time ago, when you were here last week, or until about three weeks ago, and until that time I never heard of the Gilmores getting up or making an iron plow. I can recollect well of the iron plows coming here, and being around for sale. My father had bought wooden
335 plows before that and I recollect we wished afterwards that we could have got the iron plows, and we did not know of the iron plows at the time we got the wooden plows. And I recollect distinctly that when the iron plows did came around, they were never to that time made at Smyrna, but were from a distance, and the first I recollect of being made there, were by Mr. Hall, and they were also made there by Mr. Cox.

Cross-examination by question and answer;

X Q. 1. When and where did you first see a double-shovel iron plow?

A. I can't remember when, but I think at Tom Green's store, at Freeport, was the first I ever saw them around here. I saw some at Cadiz before that.

X Q. 2. Was it as early as 1860?

A. I couldn't try to fix dates. I suppose it must have been not far from there, but as to the dates I wouldn't attempt to say. It may have been sooner, but it was as early as that anyhow, I think.

X Q. 3. You think they first came from Pittsburg, do you?

A. That is my impression.

X Q. 4. If I should prove to you that these plows were made and sold in Cadiz as early as 1853, and peddled through this country as early as 1854 or 1855, would you conclude that your memory was very good with regard to these events, when you can't remember positively seeing them earlier than 1860?

A. I conclude that my memory is good enough to conclude they were never made in Smyrna until made by Halls; and that, if they were ever made before that in Smyrna, I am positive I would have known it.

X Q. 5. You would have known it equally well, would you not,
336 if they had been peddled through this country in 1854, 1855-6-7-8, and were generally known to the farmers around here as early as 1855?

A. There comes in the dates. They might have been peddled then; and, if so, I would have known it. I don't doubt but I knew of the first that came into this country for sale, but as to the dates I can't say when it was.

X Q. 6. Do you know when the Gilmores moved away?

A. I certainly do remember when they left Smyrna.

X Q. 7. When did they leave?

A. I can't remember the date, but recollect the circumstances of their moving and leaving the town.

X Q. 8. All you remember is, then, that they did move away?

A. I remember that they did move away.

X Q. 9. Do you remember anything else connected with it?

A. I remember they used to blacksmith there. I don't recollect any particular circumstance about their moving away, only I remember when they left the town.

X Q. 10. Do you remember whether they moved before 1855 or after?

A. No; I don't recollect.

X Q. 11. You base your conclusion that the Gilmores never made any of those plows before they went away, upon the fact that you did not have one at that time, do you?

A. I do.

X Q. 12. You are sure you would have had one if they had been made there, are you?

A. I am confident we would.

X Q. 13. You are not sure that you had an iron double-shovel plow earlier than 1860, are you?

A. I am sure I had not one before 1860.

X Q. 14. Have you ever had one?

A. We never had.

337 X Q. 15. And yet you are sure you would have had one, are you, if they had been made or sold in Smyrna before the Gilmores went away?

A. I am confident we would.

X Q. 16. Did the Gilmores ever make wooden double-shovel plows?

A. Not to my recollection.

X Q. 17. You would have been just as apt to have recollected that as you would the iron plows, would you not?

A. I think not, on account of the fact that the wooden plows were around here before the iron ones were.

X Q. 18. When were the wooden plows first introduced around here?

A. I do not know, but certainly before the iron ones were.

X Q. 19. Do you remember ever seeing a wooden plow before 1855?

A. I think we had the wooden ones before that time, and maybe two of them before that time.

X Q 20. Do you remember whether these wooden plows were in use as early as 1850?

A. I think they were.

X Q. 21. How old were you when the Gilmores went away?

A. I can't say; there comes a date in.

X Q. 22. As you remember so distinctly of their going away, perhaps you can remember whether you was a boy or a full-grown man at that time?

A. I know I was old enough to work in a harvest field at that time.

X Q. 23. Can you tell about how old you were when he went away?

A. Not to a certainty, I can't.

338 X Q. 24. How nearly would you venture to guess at your age, then, to your recollection?

A. I wouldn't guess at all.

X Q. 25. Within what limits can you be certain?

A. I don't think I could come within five years of it to a certainty.

Redirect examination:

Q. 26. Was James Gilmore regarded amongst his associates as a very ingenious young man?

(Objected to as opening a new question on redirect examination.)

A. I don't know that he was, more than common.

Q. 27. Did you ever hear James Gilmore, or his father, or anybody else, intimate that James Gilmore made the first iron double-shovel plows until within a few weeks past, since this case has come up, or did you ever hear any person intimate that the first were made at Smyrna?

(Objected to, the witness having already testified on that point.)

A. I never did.

Q. 28. Were you sufficiently intimate with Jim Gilmore to have known of his making double-shovel iron plows, if he had been the first ever to make and sell them, or if he had made and sold them in each of the years 1849–'50–'51 and '52, before they ever came in from elsewhere?

(Objected to as mere speculation, the witness already having shown his relations with Gilmore and stated what he knew.)

A. I certainly would have known of it if he had made them in Smyrna.

339 Cross-examination:

X Q. 29. Do you know Elias Phipps?

A. I do.

X Q. 30. Is he not an older man than you are? Has he not resided in Smyrna for as much as thirty years?

A. He is an older man, and has been in Smyrna about thirty years.

X Q. 31. Have you any reason to doubt his word?

A. I have not.

X Q. 32. Have you any reason to doubt James Gilmore's word?

A. I have not.

(Objected to, as the man James Gilmore left here when he was only nineteen years old, and as long ago as 1853; and his character for veracity must have been established since then.)

X Q. 34. Don't you think James Gilmore would be more apt to know if he made these plows before he left here than you, who lived two miles and a half out of town, and was only occasionally in his shop, and cannot remember within five years the time he left here, and cannot fix a date of seeing an iron plow earlier than 1860?

A. He certainly would be more apt to know; but I don't believe he ever made any in Smyrna, nor he couldn't make me believe it.

X B. 35. You have stated that your reason for believing that he did not make them before leaving was because you never had any at that time, have you not?

A. Yes; and no other time, and I haven't any now.

Redirect examination:

Q. 36. If Elias Phipps should say that his father bought one of those iron double-shovel plows from Gilmore in 1850, and if that was several
340 years before such plows had ever been brought to this place from elsewhere, what would you say as to his statement?

A. I would think he was mistaken.

Q. 37. If William Romans should say that he saw Gilmores making them in 1850 or 1851, and if that was some years before they had ever been brought in here from elsewhere, what would you say of his statement?

A. I should think he was mistaken.

Recross-examination:

Q. 38. Your reason for thinking that Mr. Phipps and Mr. Romans were mistaken is the same as your reason for thinking that the Gilmores did not make these plows before they went away, is it not?

A. My reason is that I do not believe the Gilmores made the plows before they went away.

Q. 39. Your reason for believing they did not make them before they went was that you think you would have had one if they had, is it not?

A. Certainly we would have had one if they were made before we got our wooden plows.

Q. 40. Do you remember when you got your wooden plows?

A. Not exactly; I suppose between 1845 and 1850; not far from that: I think it was after 1845.

Q. 41. Then you think it was earlier than 1850, do you?

A. I would not say positive, but not far from that time.

Q. 42. Then since your reason for thinking that the Gilmores did not make these plows in Smyrna is that you think you would have had one if you had seen them before you bought the wooden ones, you conclude that they were not made there before 1850, do you not?

341 A. I don't believe the Gilmores ever made any iron plows in Smyrna.

Q. 43. Because you think you would have had one if they had made them before your father bought the wooden ones. Is that correct?

A. Yes, I do. If we had seen an iron plow before we bought the wooden ones, we certainly would have bought one.

S. R. SMITH.

Testimony of Wm. G. Smith.

WM. G. SMITH, being called and duly affirmed, deposes and says in answer to interrogatories proposed by W. W. Leggett, *deposes and says:*

Q. 1. What is your name, age, residence, and occupation?

A. Wm. G. Smith; age, forty-six years; residence, one and one-half miles south of Smyrna; occupation, farmer; have lived within two miles of Smyrna all my life.

Q. 2. Were you acquainted with the Gilmores, who were blacksmiths, up to near 1854 at Smyrna; if so, how well did you know them?

A. I was acquainted with Jim Gilmore's father, and I was acquainted with Jim Gilmore from the time he was a small boy until they moved away.

Q. 3. Were you ever at their shop from 1848 to 1854, or to the time they left; if so, how often and for what purpose?

A. I was in the shop occasionally for horseshoeing and other work. They did some, but not all of our work. The main part of our blacksmithing was done by Chas. Chandler in a shop opposite Gilmore's shop. Chandler was a great deal of his time not able to work—shoeing particularly—and when he was not able, we went to Gilmore.

342 Q. 4. Are you a brother of Samuel R. Smith?

A. Yes.

Q. 5. What place was credited with the first iron double-shovel bent beam plows that you ever knew of?

A. 5.

Q. 6. Was it Smyrna, or did they come from a distance?

A. They came from some other place; I think the first I saw were at Freeport, but they were not made in Freeport.

Q. 7. Do you know when it was that the first iron double shovel plows came into this neighborhood? Give any circumstances by which you can fix the time.

A. I can't fix the time when they came.

Q. 8. When did you buy your wagon?

A. In February, 1850.

Q. 9. When your wooden double-shovel plow?

A. Some time after; but don't recollect whether that summer or the summer after. It was in 1850 or 1851.

Q. 10. Did you purchase any other wooden plow; if so, when?

A. We got another wooden plow either one or two years after; I think two years after we got the first one.

Q. 11. Have you those implements yet?

A. I have the wagon and one of the plows. It was my father that bought them. I was then living at my father's home. They are the only wooden plows we ever had.

Q. 12. Up to the time that you purchased these plows, were iron double-shovel plows ever known in this section of country?

A. I never saw one until after we had both the wooden ones.

Q. 13. Did you ever hear of the Gilmores making any such plows in Smyrna?

343 A. I can't say whether I did or not; I know such plows have been made in Smyrna since Gilmores left, but don't know whether they made any or not.

Q. 14. If any were made by them was it before the plows ever came into this section from a distance, or were they patterned after some plow that came from a distance?

A. There were no such plows made in Smyrna until they were brought in there from elsewhere.

Q. 15. Do you recollect whether blacksmiths around in the smaller towns and in Smyrna also began to make those plows right after they came into this country from a distance.

A. I recollect that well; they did.

Q. 16. If such plows had ever been made and sold in Smyrna by the Gilmores before the plows came into this section of country from a distance, would you have known of it—that is, if they had made them from 1848 to 1853?

(Objected to as speculative.)

A. I certainly would have known it.

Q. 17. When they came into this country, as you say, after you had both your wooden plows, were the iron plows then regarded with curiosity and as a bran new thing in this section?

A. They were new—a new thing; some curiosity, of course.

Q. 18. Was James Gilmore a young man that would be apt to talk about any new thing he might have made in agricultural implements?

A. Well, he wouldn't need to talk about it; if they had been made there I would have known of it. I knew him well, but I did not have opportunity to know much of his habit about such talk.

Q. 19. Are you a Quaker?
A. I am.

344 Cross-examination:

X Q. 20. The two wooden shovel plows that you have spoken of were the only ones purchased by your father while you and your brother lived at home?

A. The only double-shovel plows he ever owned.

X Q. 21. Your brother testifies that he thinks these plows were purchased between the years 1845 and 1850. Which do you think more likely to be correct?

A. I know he is mistaken.

X Q. 22. Why do you think the Gilmores did not make iron double-shovel plows before they moved away from Smyrna?

(Objected to, as witness has said they may have made them; but, if so, they were patterned after the plows that came from a distance.)

A. I couldn't say positively that they didn't before they moved away from Smyrna, because I don't know when they did move from Smyrna?

X Q. 23. Why do you think they did not make them before you saw such plows that had come from a distance?

A. I recollect that the first iron double-shovel plows I ever saw were brought in from some distant point to sell.

X Q. 24. When did you see these plows?

A. I can't tell; it was some time probably the next year after we got the second double-shovel wooden plow. I know it was after that at least, for it was not until after that that I ever saw one or knew that such a plow had ever been invented.

X Q. 25. Where were they brought from?

A. I can't say where.

X Q. 26. How do you know they were not made in Smyrna?

345 A. Well, I have nothing but my recollection; the plows were talked of as coming from some distant place. I have my impression, but I could not be positive where the place was.

X Q. 27. Have you thought particularly of this matter since that time until Mr. Leggett spoke to you about it? Has anything occurred in the interval to call it to your attention?

A. Nothing has occurred.

X Q. 28. And as you remember back twenty or twenty-five years, your impression is that the first iron plows you saw were not made in Smyrna. You couldn't be absolutely positive on that point, could you?

A. I think I can be positive of that, and am not mistaken.

X Q. 29. Where did you see the first such plows?

A. I think the first I saw was in Freeport, at Thomas Green's store, but probably afterwards the same season at Smyrna.

X Q. 30. Why do you think you did not see them until after your father had purchased the wooden plows?

A. Because when we first saw them we were attracted with them, and wished we had seen them before we got the wooden plows, and had gotten the iron ones instead.

Redirect examination:

Q. 31. You say you have an impression what the distant place was from which the iron plows first came. What is that impression—what place?

A. I think they were from Cadiz; I am not certain.

WM. G. SMITH.

Testimony of Wm. K. Smith.

WM. K. SMITH, being duly affirmed, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Wm. K. Smith; age, thirty-four years this month; resi-
346 dence, one mile and a half south from Smyrna; occupation, farmer. I was born at this place, and have always lived here.

Q. 2. Are you a Quaker?

A. I am.

Q. 3. Do you recollect where and when you first saw a double-shovel iron bent-beam plow?

A. At Thomas Green's, in Freeport, at his store. I think I was about nine or ten years of age. Father did a great deal of dealing there, and we young fellows used to go with him. My father got one of the iron plows then from him.

Q. 4. Were they, or not, a new thing in this section at that time?

A. Yes; they were considered so, as far as I was concerned; I thought it was a new-looking implement; they were considered so by the people.

Q. 5. Did you know where they were made?

A. No; I can't say positively, but I think they were made at Pittsburgh; there was some brand on it that I cannot recollect now.

Q. 6. If they had been made in Smyrna before that time by the Gilmores, would you have known of it?

A. I think I should, as I was there frequently. I didn't know as they ever made anything of the kind. They did shoeing and ironed wagons, etc. The Gilmores did my father's blacksmithing generally.

Q. 7. How old were you when you commenced to plow?

A. I plowed corn the summer I was seven, going on eight years old, and with the old-style wood cultivators.

Q. 8. Did you ever hear it said from that time until this case came up that Gilmores were the first to make such plows?

A. No; I never heard it until the other day from Will Romans. He said he had been down to Urichsville about it.

347 Cross examination:

X Q. 9. When your father purchased the first double-shovel iron plow, you were nine or ten years old, you say. That would be in 1852 or 1853. You do not know, do you, whether the Gilmores had made or sold any of these plows before that or not?

A. Oh, no; I know nothing about their making or selling any at any time.

X Q. 10. How old were you when the Gilmores went away?

A. Well, I couldn't say to a certainty. I must have been about thirteen, somewhere there. I recollect of their leaving, but have nothing to refer back to to give a definite answer.

X Q. 11. They might have made and sold these plows before they went away without you knowing it, mightn't they?

A. Oh, I suppose they might have made a good many things, but it appears that, if they had made a business of it, I would have heard of it if they had.

X Q. 12. It is not impossible, is it, that they made a few, say one or two a year, for a few years before they went away, although you don't remember of hearing of it?

A. They may have made them and I not know of it.

X Q. 13. You haven't thought of this matter, have you, until a short

time ago—that is, where these plows first came from since about the time your father purchased his?

A. No; the first that brought it up was when I talked with Romans, and then when my father bought his, that they were brought into or imported into this county for sale.

WM. K. SMITH.

By consent of counsel the witness, Wm. K. Smith, is allowed to
348 correct his deposition, and state that he is mistaken as to his residence; that during the years 1849, '50, and '51 he resided in Jefferson County, with his grandfather.

Testimony of Wm. Matthess.

WM. MATTHESS, being called and duly affirmed, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Name, Wm. Matthess; age, fifty-one years; residence, one-half to three quarters of a mile from Smyrna, to go around the road; occupation, farmer.

Q. 2. How long have you lived in this neighborhood?

A. Ever since 1842 I have lived within three miles of Smyrna.

Q. 3. Did you know the Gilmores, who were blacksmiths here prior to 1854? If so, please state how well you knew them, and what connection, if any, you ever had with them.

A. I knowed them very well; I worked for them in 1843 and 1844, and was acquainted with them up to the time they went away. I knowed Jim Gilmore as long as I did the rest of them.

Q. 4. Were you in and out of their shop frequently after you stopped work for them, and did you afterwards work for any other blacksmiths here?

A. I was. I worked at Charley Chandler's some little after that.

Q. 5. Where was it that you first saw or heard of a double-shovel bent-beam iron plow, and when was it?

A. The first was at Tom Green's store at Freeport. I reckon it was about 1854—1853 or '54—I think the spring of '54.

Q. 6. Had you ever known or heard of the Gilmores making any such plows before you saw that one at Freeport?

A. I never did, to my knowledge.

349 Q. 7. Who was the first person you recollect of making them at Smyrna?

A. Stephen Hall, son of Dr. Hall, a blacksmith who worked here.

Q. 8. Please state at what farms you have lived since that time that you worked for Gilmore.

A. First was at Harrison Roman's farm, in 1843, about three miles southeast from here; next at Joseph Mead's, in 1846, less than three miles southeast from here; then at Broadus Bethel's, one mile east, in 1847; then at Joseph Holloway's, between here and Bethel's, in 1848; then at Jacob Grew's in 1849, nearly three miles south of town; then I stayed over at my father-in-law's, two and a half or three miles, during the winter of 1849 and '50; then on Joseph Mead's place again, nearly a year, in 1850; then on Henry Briggs' place, joining the south of the town, about a year, in 1851; then on Vicker's place, a mile and a half west of here, in fall of 1851 and in 1852; then out here about half a mile from town, on my own place, and moved away in the fall or winter of 1853.

Q. 9. If James Gilmore, or the Gilmores, had made and sold iron double-shovel plows in 1848-'49-'50-'51-'52 and '53, here in Smyrna, before such plows were made or sold anywhere else, would you have known of it?

(Objected to as mere speculation.)

A. I don't know whether I would or not; I can't mind anything of it.

Q. 10. When you say you can't mind anything of it, what do you mean?

A. I mean that I have no recollection of any plows of the kind.

Q. 11. Were the plows a new thing, and did they attract at-
350 tention as a curiosity amongst farmers at the time you first saw the plows at Freeport?

A. I believe they did.

Q. 12. You say you worked at Briggs' place in 1851; do you recollect of Mr. Phipps, on the adjoining farm, having and using one of those iron plows at that time?

A. I don't.

Cross-examination:

X Q. 13. Where did you live at the time you saw the first iron double-shovel plow that you remember, at Thomas Green's store at Freeport?

A. I lived in Guernsey County, between here and Londonderry, right this side of the bridge.

X Q. 14. What year was that?

A. I think it was 1854.

X Q. 15. How does it happen that with one exception you never lived on the same farm twice?

A. Well, because I thought I could do better by moving.

X Q. 16. Did Thomas Green claim that he was the first man to introduce these plows here in this part of the county?

A. I don't know what he claims as to that.

X Q. 17. When did the Gilmores leave here?

A. I think in 1853.

X Q. 18. You do not know, do you, whether they made these plows here in 1851 and '52?

A. I do not.

X Q. 19. You do not know, do you, whether they, the Gilmores, made these plows here before Thomas Green first began selling them in Freeport?

A. No. I don't know as they ever made any.

X Q. 20. If I should prove to you that they did make and
351 sell these plows, you would think that your memory with regard to what they were doing and what they were not doing so many years ago could hardly be depended on, would you not?

A. Of course, if you should prove it by good men, I would have to say I was mistaken as to the matter.

X Q. 21. You would regard Elias Phipps and William Romans and John Romans as good men, would you not?

A. I would regard Elias Phipps as a good man; but as to the others, I would not go much on them.

X Q. 22. Did you not state to me, Mr. Stem, last January, that the first iron double shovel plow you saw was made by Mr. Hall, or words to that effect?

A. I told you that the first double-shovel iron plow I ever saw with wooden handles was made by Mr. Hall in Smyrna.

X Q. 23. How came you to testify in this case?

A. I came here to the shop this morning and this gentleman, Mr. Hubbell, asked me about it, and then went out and brought Mr. Leggett; then you, Mr. Leg'ett, wanted me to come up and tell what I knowed about it.

X Q. 24. Who first mentioned the name of Thomas Green in connection with the plow?

A. I am not certain but what I did. I believe I said that Thos. Whitney bought a double-shovel plow of Thomas Green.

X Q. 25. Did Mr. Elias Phipps live on the farm adjoining Mr. Briggs when you lived on Briggs' farm?

A. He lived down here with his father; it joins Briggs' farm; that was 1851.

WM. MATTHESS.

352 *Testimony of Thomas Green.*

THOMAS GREEN, being produced and duly affirmed, deposes and says:

Q. 1. What is your name, age, residence, and occupation, and how long have you kept store here?

A. Thomas Green; age, fifty-one years; residence, Freeport, Ohio; occupation, retired merchant. I kept store here since 1847 until a few years ago.

Q. 2. Please state where and when you first saw or heard of iron double-shovel plows with bent beams.

A. The first I ever recollect of seeing were here at this place, at my own store; I can't tell the year exactly. I know I sold them in the year 1855, and I think the year before. It was what we called the Laizure plow. I think Laizure & Slemmons were the names on them.

Q. 3. Did you ever know or hear of such plows being made or sold at Smyrna before that time that you first had them here at your store?

A. No, sir; I have no recollection of ever seeing or hearing of any.

Q. 4. Were you sufficiently familiar with Smyrna people and Smyrna business to have known of it if they had been made or sold there before you had them for sale here?

(Objected to as a matter of speculation.)

A. It is probable I would have noticed them or known of them.

Q. 5. Did you ever hear Gilmore's name, of Smyrna, mentioned in connection with getting up or being the first to make such plows?

A. No, sir; I never did.

Q. 6. At the time they first came into this section from Cadiz, were they then regarded as a new thing, and did they excite curiosity among the farmers?

353 A. Yes, sir; they were regarded as a new thing, and attracted the attention of farmers at that time as being a new thing.

Q. 7. Did you ever hear anybody at that time say that those plows had been made before that at Smyrna?

A. No, sir; I have no recollection of ever hearing anything of the kind.

Q. 8. When, if ever, did you hear that such a claim was ever made?

A. Never, until this case came up, and Mr. Stem came here.

Q. 9. And what did you tell Mr. Stem about it then?

A. I told Mr. Stem that I believed no such plow had ever been made there.

Cross examination:

X Q. 10. Who did you understand to be the inventor of the Laizure plow sold by you in 1855?

A. Slemmons, as I understand; and Laizure the manufacturer.

X Q. 11. You did not sell these plows here earlier than in 1854, did you?

A. I think not. I cannot tell; that is my recollection.

X Q. 12. Who sent these plows here for sale?

A. They were sent here, I think, by Laizure; it may have been by Laizure & Slemmons.

X Q. 13. You think you are the first who sold these plows in this neighborhood, do you not?

A. I believe I sold the first with double-shovel iron plows that were sold in the neighborhood.

X Q. 14. When did the Gilmores move away from Smyrna?

A. I don't remember. I knew Frank, the father. I have a recollection of seeing the boys. I can't say I knew them. The father came here to deal.

354 X Q. 15. How far is Smyrna from here?

A. Three miles they call it.

X Q. 16. Were you ever in Gilmore's shop?

A. No, sir; I have no recollection of it.

X Q. 17. These events, concerning which you have testified, occurred over twenty years ago, did they not?

A. Yes, sir.

X Q. 18. Have you any books or papers by which you can fix the date when the Laizure plow was first sold here?

A. I am not able to say positively whether I have or not. I presume I have.

X Q. 19. Please refer to any papers you may have and satisfy yourself, if you can, as to the date.

A. I have examined, and the earliest records I find are receipts from Laizure for plows in 1855; but I feel confident I sold them in the year 1854, but not earlier, I think.

X Q. 20. If the Gilmores left Smyrna in 1853, if, then, they ever did make or sell any double-shovel iron plows in Smyrna, it must have been before you introduced the Cadiz plows into this part of the county, must it not?

A. Oh, yes, sir; of course.

Redirect examination:

Q. 21. Please state to what extent you were engaged in the plow business at that time and before, and how you sold and introduced the Cadiz plows.

A. I was employed as country dealer, and sold them all over this part of the country, and I had often to sell the iron plows conditioned that if they were not satisfied they might return them. I had to push them, force them into use. They were then a bran new thing in this country.

THOMAS GREEN.

355 *Testimony of Wm. W. Hollett.*

WILLIAM W. HOLLETT, being called and duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Wm. W. Hollett; age, forty-six years old; residence, one mile and a quarter from Smyrna, Ohio, and occupation, farmer.

Q. 2. Were you acquainted with the Gilmores, who were blacksmiths at Smyrna, prior to 1854, and were you acquainted with James Gilmore?

A. Yes, sir; and I was very well acquainted with James; went to school with him; was with him frequently; was as well acquainted with him as with any boy in the neighborhood.

Q. 3. Did you ever hear of his inventing a double-shovel iron plow?

A. I never did, not until the last few weeks, since this case came up. The first I ever heard of the like was when I heard it from Mr. John Alexander, in Smyrna.

Q. 4. What place was credited with the first double-shovel iron plows you ever knew or heard of in this country?

A. My recollection is that Cadiz was—that is, the iron ones. The first I remember of seeing was at Mr. Thos. Green's store at Freeport, and I think I bought one of him the next year.

Q. 5. If Gilmores, or James Gilmore, had made and sold such iron plows at Smyrna before they ever came here from Cadiz, would you have known of it?

(Objected to as speculative.)

A. It does seem to me that I would have heard of it.

Q. 6. When you saw that plow at Green's store, were such plows a bran new thing in this country?

A. I think so; yes, sir.

Q. 7. Did they attract curiosity at that time amongst farmers?

A. Yes, sir; some little curiosity—right smart curiosity.

Q. 8. Were you present last week, when Mr. Wm. Romans,
356 Mr. Leggett, and Mr. Hubbell were conversing about these plows here at your house?

A. Yes, sir; I was present when Mr. Romans was talking to you gentlemen; he was here making a book-case for me.

Q. 9. What, if you recollect, did Mr. Romans say as to himself and the testimony he had given in this case—the substance of it?

(Objected to as hearsay.)

A. He said, I recollect, that he thought he was not mistaken about Gilmore getting up those plows, but he was perfectly willing to leave that matter to Mr. Geo. B. Smith and Jesse Romans, and whatever they said about it he was willing his testimony should stand or fall by what they said.

Cross-examination:

X Q. 10. Do you remember when you first saw this plow at Thos. Green's store?

A. No, sir; I could not state the year that I saw it there.

Q. 11. Did you remember the year in which your father died until you looked into the Bible to ascertain?

A. I couldn't call it to memory just at that time.

X Q. 12. If you could not remember so important an event in your life as the death of your father without refreshing your memory, is it not possible that you may be mistaken as to the place where you first saw an iron double-shovel plow? May you not have seen one before without your attention being called particularly to it?

A. I think that it was not possible that I had seen one before, from the fact that I had never used a double-shovel, and I was anxious to get
one—father and I. We were partners in farming, and when I
357 first saw this iron plow I was took with it, and we were talking about getting one that year; but we put it off till the next year, when we bought the plow, each paying half.

X Q. 12. Is it not possible that having purchased your plow of Mr. Green, and he having made considerable effort to introduce the plows

into this neighborhood, that you have associated that kind of a plow more particularly with Mr. Green, and that after a space of nearly twenty years you might be mistaken, since your memory fails you in regard to so important an event as the death of your father?

A. I am very positive that the first iron plow I saw was at Green's store. I was not mistaken in my father's death. I know that he died; but as to the date when I saw that plow, I don't remember.

X Q. 13. Do you remember of ever seeing any of these double shovel iron plows at Mr. Gilmore's shop?

A. Yes; I remember of seeing some at his shop, after I had got mine, though.

X Q. 14. You are positive about that, are you?

A. Yes, sir.

X Q. 15. Do you remember whether these plows at Mr. Gilmore's shop were made by Mr. Gilmore and were for sale by him?

A. No; I can't say that they were. I never saw Mr. Gilmore working on any such plow. They were selling inside of the shop. I suppose they were for sale.

X Q. 16. Can you remember whether you saw them there as much as a year before Mr. Gilmore moved away, or do you think it was more or less?

(Objected to, as the witness has not said he saw them there before Mr. Gilmore moved away.

Question withdrawn.)

X Q. 17. You saw them at Mr. Gilmore's shop while he was working at the blacksmith trade in Smyrna, did you?

358 A. Yes, sir.

X Q. 18. Should you think that it was as much as a year or two years before he moved away?

A. I have no recollection how long it was before he moved away. I could not say.

X Q. 19. You are very sure, are you, that you saw them there at his shop before he moved away?

A. That is my recollection, that I saw them there.

X Q. 20. You are sure you saw them at Mr. Gilmore's shop while he was working at the blacksmith trade in Smyrna, are you?

A. No, sir; I am not sure of that. Them plows that I saw there, I am not sure but it was after he left. I feel very positive now that it was after he left.

W. W. HOLLETT.

Testimony of Alonzo F. Hubbell.

ALONZO F. HUBBELL, being duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Alonzo F. Hubbell; age, thirty-eight years; residence, Sandusky City, Ohio; occupation, superintendent of the Sandusky Seat Company.

Q. 2. Were you present at the house of Wm. W. Hollett at a conversation where there were present Mr. Wm. Romans, Mr. Hollett, Mr. Leggett, and yourself? If so, please state what Mr. Romans said relative to himself and his testimony.

A. I was present. Mr. Romans said in substance like this: We had some conversation with him about the deposition he had given, and Mr. Hollett remarked: "I think, Romans, when you come to get at the bottom of this you will find that you are mistaken; that you have

359 got the wood plow in your mind, as they were made here about

that time." Mr. Romans replied that if we would see Geo. B. Smith and Jesse Romans, of Cardington, Ohio, he was very certain they would know whether Gilmore's folks made the iron beam double-shovel plows, and that he was willing that his deposition should stand or fall by what they would say as the plows being made by Gilmores. He spoke of them as two men who were very observing, and that he felt that they would certainly have seen the plows made there and know all about their being made there.

Cross-examination waived.

ALONZO F. HUBBELL.

Testimony of Wells W. Leggett, &c.

WELLS W. LEGGETT, being duly sworn, deposes and says:

Q. 1. Were you present at the conversation at Wm. W. Hollett's where you and Mr. Hollett, Wm. Romans, and Mr. Hubbell were present; if so, what did Mr. Romans say as to himself and his testimony?

A. I was present and recollect the conversation. Mr. Romans said in substance that he was not infallible, and that Geo. B. Smith and Jesse Romans, at Cardington, ought to know all about these plows, if anybody did, and for us to see them; that he was willing that his testimony should stand or fall by what those two men should say.

Cross examination waived by Mr. Stem.

WELLS W. LEGGETT.

Testimony of Andrew S. Steel.

ANDREW S. STEEL, being duly affirmed, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Andrew S. Steel; age, nearly sixty-nine years; residence, Freeport, Ohio; am blacksmith by trade.

360 Q. 2. Were you blacksmithing here from 1847 to 1854?

A. Yes, sir; I commenced in 1853.

Q. 3. Did you know the Gilmores, who were blacksmiths, at Smyrna, prior to 1854?

A. Yes; I knew them—that is I knew the old man. I was not so well acquainted with the son, but knew him when I saw him.

Q. 4. Where and when did you see the first double-shovel iron plow with bent beams?

A. I believe the first I saw was in this town, if I mistake not, at Thomas Green's store. I can't say exactly when it was, but to the best of my knowledge about the year 1854.

Q. 5. Were they a new thing in this section of country at that time, and did they or not attract the curiosity of the farmers and yourself?

A. Yes, sir; they were to me; and they attracted the curiosity of the farmers and myself.

Q. 6. Did you ever hear of the Gilmores making any double-shovel iron plows at Smyrna?

A. Well, not till recently—only hearsay.

Q. 7. What style of plows were they?

A. The style that I heard of them making was a long, straight beam in center, and then pieces connected back, and in place of the round bend at the back end they were bent square.

Q. 8. Did you ever hear of their making any iron plows of any pattern before the Cadiz plows came into this country?

A. No, sir.

Q. 9. After the Cadiz plows came into this country, did blacksmiths here and in neighboring towns begin to make iron plows of that style or similar patterns?

A. Well, yes; the first plows I ever knew of being made by
361 the blacksmiths in this section of country was made here in 1855, in my shop.

Q. 10. Do you recollect about the time the iron plows came in from Cadiz, of the blacksmiths here and in the neighboring towns getting together to see if they could not get around it, and not be liable to any patent the Cadiz people might get?

A. I recollect the circumstance, but not the time. Slemmons served a notice on the smiths down in this section not to make the plows, about that time.

Cross-examination by Mr. STEM:

X Q. 11. Were you ever in Gilmore's shop; if so, when?

A. Yes, sir; I was in Gilmore's shop. It must have been two or three years before he left; I expect probably 1849 or 1850. It has been so long ago, I don't recollect positive.

X Q. 12. When did he make the double-shovel iron plows which you have described?

A. I never heard of his making any iron plows until this case came up. Mr. John J. Alexander is the first person I ever heard talk about it. He used to keep hotel in Moorefield.

X Q. 13. When, as nearly as you can recollect, did the blacksmiths get together to avoid any claim on the Cadiz plow. Do you think it was before or after you began making them here?

A. It was after they were commenced to be made here.

X Q. 14. Did the Cadiz parties claim to have a patent on the plow?

A. Yes, sir.

Q. 15. How long after 1855, when you think you began making them, was it when this meeting was held?

A. Well, it was in 1855 that the first were made here in this country, that I know of. I don't want to be understood that there was a
362 meeting held, but the men, the blacksmiths, talked together about what they should do. I can't exactly tell the date, but I think it must have been two or three years after the first was made here.

Q. 16. You are quite sure, are you not, that you made your first plow the first year after Mr. Green first sold them here?

A. I can't say that, because I only thought it was 1854 that he first brought them here. It might have been in 1853, and I am sure I made my first plow in 1855. It is my impression that it was the first year after he brought them here for sale.

ANDREW S. STEEL.

Testimony of Edward Carpenter.

EDWARD CARPENTER, being produced and duly sworn, deposes and says:

Q. 1. What is your name, age, residence and occupation?

A. Edward Carpenter: age, seventy four years; residence, Londonderry, Guernsey County, Ohio; my house is four miles from Smyrna: and occupation, farmer, and justice of the peace since 1844, and have lived here sixty-nine years.

Q. 2. When and where did you first see a double-shovel bent beam iron plow?

A. At my own house, half a mile north of here; James Kelly came to my house with a load of double-shovel iron plows; staid all night, and in the morning I bought one; he told me they were from Cadiz. I can't recollect when it was; I think it was between 1853 and 1855, but which year I would not say. Those were the first I ever saw or ever heard of.

Q. 3. Were you at that time and during the ten years preceding to that time frequently in Smyrna, and did you make it a point to be posted in new agricultural implements?

A. Certainly; I was many a time there. I don't know as I ever made any inquiry particular about agricultural implements.

363 Q. 4. Did you ever know or hear of such plows being made in Smyrna before you bought that plow, and if they had been so made and sold do you think you would have known of it?

(Objected to as speculative.)

A. I did not to my knowledge, and I think I would have known of it if they had been so made and sold.

Q. 5. Were the plows a new thing in this country at that time you bought that plow, and did they attract curiosity amongst farmers, and who beside yourself bought the plows here at that time?

A. They were rather, they was; and I believe quite considerable attention was attracted by them. All that I know of buying them at that time was John Nibleck and myself.

Cross-examination waived by Mr. Stem.

EDWARD CARPENTER.

Testimony of A. T. Hogue.

A. T. HOGUE, being called and duly sworn, deposes and says:

Q. 1. What is your name, age, residence and occupation?

A. A. T. Hogue; residence, Londonderry, Ohio; age, thirty-seven years; occupation, blacksmith.

Q. 2. Please state anything you may know relative to when the first iron double-shovel bent beam plows came into this country.

A. In the spring of 1852 I went to live with my uncle, Andrew Hogue, three miles from Freeport and six from Smyrna. I was then twelve years old. In 1853 my uncle built a barn and also put some few logs on an old stable; at one of these occasions he had a raising; one job was in the spring and the other in the fall of 1853, for I recollect that at Hallow Eve work was being done on the barn. At that raising the farmers around the country were there to help, and I recollect of

364 a man by name of Lewis Davidson calling out that they were making double-shovel iron plows, all of iron, at Cadiz—all iron but the little pieces you hold to. Some said it might be a good thing, others that they thought it would not work well. Up to that time none of them had seen one. David Steel was the carpenter that did the work on the barn.

Cross-examination:

X Q. 3. You were only a boy of thirteen years of age when these events occurred, were you not?

A. Yes.

X Q. 4. Had you ever been in Smyrna up that time?

A. I have no recollection of ever being there up to that time.

X Q. 5. What town was between your uncle's and Smyrna, and what his post-office town?

A. Freeport.

A. T. HOGUE.

It is agreed that if David Steel was produced, he would testify that he built a barn for Andrew Hogue, three miles from Freeport, in 1853.

W. W. LEGGETT,
For Complainants.
ARTHUR STEM,
For Defendants.

It is stipulated and agreed that if John Oxley, of Hole-in-the-Ground, was produced, he would testify that he had lived at Hole-in-the-Ground since 1846, and has made wooden diverging-beams double-shovel plows there since that time; that, so far as he knows, Aaron Babb, of
365 that place, was the first person ever to make iron double-shovel plows, or iron plows, or cultivators of that plan.

It is also stipulated and agreed that if said Aaron Babb was produced, he would testify that he moved to Hole-in-the-Ground in April, 1855, and from that time forward made iron double-shovel plows of the McGrew pattern, like those McGrew made at Harrisville; that he understood McGrew was an agent for Slemmons & Laizure, of Cadiz, to sell their plows, before he began to manufacture at Harrisville on his own account; that, so far as he knows, he (Babb) was the first person ever to make iron double-shovel plows or iron cultivators, or any iron plows, at said Hole-in-the-Ground, and he began to make them in 1855.

W. W. LEGGETT,
For Complainants.
ARTHUR STEM,
For Defendants.

CADIZ, OHIO, *March* 3, 1877.

Testimony of Wm. P. Brown.

WM. P. BROWN, of Zanesville, O., being produced and duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Wm. P. Brown; age, forty-seven years of age; residence, Zanesville, Ohio, and occupation, superintendent Brown Manufacturing Company, Zanesville, Ohio.

Q. 2. Please state the extent to which you have been engaged in the plow business in this State, what facilities you have had for knowing the plow business throughout Harrison County, Ohio, and your facilities for knowing whether iron double-shovel bent beam plows were made at Smyrna, in Harrison County, in 1848–'49–'50–'51 or '52.

366 A. I was born in Moorefield Township, Harrison County, Ohio, about six miles from Smyrna, and at the age of fifteen or sixteen, I think in 1845 or '6, we moved onto the farm of Ridgely Pumphrey, about a mile from Smyrna; then in November of that year, the 28th I think, we moved to Beverton, Morgan County, Ohio, and on the first day of March of the following year I moved to Malta, Ohio, and went into David Dickerson's blacksmith shop to learn the trade; and I think in March, two years afterward, I returned to New Athens in Harrison County, O., I think in 1847 or 1848, and worked from then up till May, 1851, with Daniel Garven, at New Athens, at blacksmithing. I moved in May, 1851, back to Reinersville, in Morgan County, and in December, I think, of the same year, I moved to Unionville, Morgan County, and in 1854 I heard of

this Slemmons plow; I think the first I heard was from Amos Adrean, who formerly lived near New Rumley, Harrison County, six miles from Cadiz; he then lived at Unionville, but had been back to New Rumley to see his father. The first one I seen was made by Watt Harsbe, of Windsor, O., who had formerly worked at Cadiz, and that was in 1853; from that as a pattern I made seventy-two that year. In 1856, my brother John went into partnership with me, and we made four hundred; I had previously made two in 1854 from a description Adrean gave me. My brother Robert, living at that time at Londonderry, Guernsey County, three miles from Smyrna, peddled those iron-beam plows for us through Morgan, Muskingum, and Guernsey Counties in 1856. That same brother, Robert, about 1865 or '6, became a partner with us. In 1860 or '61, probably in 1860, I was notified by Slemmons of the patent having been issued. I wrote to Daniel Garven, of New Athens, to know if Slemmons had got a patent, and he said that he had, and that he (Garven) had bought Athens Township. Joseph and William Garven had previously worked
367 at Sewellsville, near Smyrna, and William learned his trade with Daniel Garven. My brother lived in Londonderry in 1851; I know it because I stayed all night with him in that year as I moved through there; he was then engaged in the fanning-mill and, I think, bee-hive business, and peddled the articles through that country. The same brother had peddled for two or three years before that for Selby, who lived three or four miles from Smyrna. Afterward, in 1866, I think, I became interested in the Slemmons patent and secured the State of Ohio, except counties previously sold, and in about 1869 I got entire control of all the unsold territory of the United States, as attorney and agent for Slemmons. During that time of my agency and afterwards (as to my facilities for knowing what was made and who was making) I made it a special business to look after infringes, and during that time I was in that business, and whenever I ever heard of anybody claiming to have made the plows before Slemmons, I traced it down to the bottom, sometimes sending parties two or three hundred miles for the purpose. With a small model of a plow like Slemmons', except with wooden handles, with circulars and cuts of same, and outfit for making the plows complete, except the shovels, I traveled through Indiana, Illinois, Iowa, Nebraska, Kansas, Missouri, Kentucky, Tennessee, Arkansas, Louisiana, Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, New Jersey, New York, Pennsylvania, and Ohio. In all those States I sent sample plows, distributed circulars, and showed the model. Since 1855 to 1864 we made on an average about six hundred per year of the plows, and from that time to 1870, I suppose it would be safe to say, about three thousand per year; then from 1870 to the present time about from eight thousand to nine thousand per year.

Q. 3. What do you say about such plows being made and sold at Smyrna prior to the invention of Slemmons?

368 A. I have but one opinion—that none were ever so made, from the fact of my brothers having lived near there, and my brothers and me having been born and raised there, and having afterwards bought an interest in the patent, and my brother from Londonderry having also come in as a partner, I don't see how it is possible that some of us would not have heard of it. Garven was a plow-maker, and had an extensive trade through that county in plows. He was probably the most extensive plow-maker in that section, and also had an extensive trade in axes. I was the most extensive plow-maker in this country, and meeting my Harrison County friends frequently, I never heard it intimated that such a plow was ever before made anywhere.

Cross-examination:

X Q. 4. How old were you when you moved away from Harrison County?

A. If I moved away in 1845, I was fifteen and over; and if in 1846, I was sixteen and over.

X Q. 5. How far is New Athens, where you worked with Garven, from Smyrna?

A. About eight or nine miles.

X Q. 6. When did Joseph and Wm. Garven begin working at the blacksmith trade at Sewellsville?

A. I couldn't say when they began; my impression was they were working there in 1849; they were working there in 1850, I think, and may have been working there also in 1848.

X Q. 7. When did you first hear that a patent was claimed on these plows?

A. My impression is in 1860; I think he gave me the date in a letter just a short time after it issued.

X Q. 8. The Gilmores had been away from Smyrna some seven years, then, when you first heard that a patent was claimed
369 on the plows, had they not?

A. Yes, I suppose; but I don't know anything about the Gilmores, but you understand that I knew of the plows long before 1860.

X Q. 9. How much time was consumed in your trip through the States you have named; and when was it made?

A. I left home in October, 1869, and think I returned in February, 1870. I had gone two other trips, each three months; the first was in 1866.

X Q. 10. Did you ever bring suit against an infringer?

A. Never did have an actual suit; have gone so far as to retain counsel against Deere & Co., but the case was compromised. I could give the names of parties we threatened.

X Q. 11. When did your brother John leave Harrison County?

A. We moved out at the same time; we did in 1845 or '46.

X Q. 12. When did your brother Robert become interested as a partner in the patent?

A. It was 1864 or 1865.

W. P. BROWN.

Adjourned to Cardington, Ohio, and continued the examination March 5, 1877.

Present, W. W. Leggett, for complainants, and Arthur Stem, for defendants. Defendants' counsel protests against the examination of this witness, complainants' time for rebuttal having expired March 1.

Testimony of Jesse Romans.

JESSE ROMANS, being called and duly sworn, deposes and says:

Q. 1. What is your name, age, residence and occupation?

A. Jesse Romans; age, sixty-three years; residence, Cardington, Ohio; occupation, farmer.

370 Q. 2. Did you formerly live at Smyrna, Ohio? If so, when, and what was your occupation there?

A. I lived about a mile south of Smyrna. I went there in 1847 and came away in 1868. I was engaged partly as a farmer and partly as a huckster, trading back and forth from Wheeling, Va.

Q. 3. Were you, while there, engaged in the plow business? If so, to what extent and when were you so engaged?

A. All I was ever engaged in the plow business was buying at Wheeling and selling. They were of Pittsburgh and Wheeling make; generally Pittsburgh. It was done along through the time I lived there. Did not trade much with Wheeling till about 1850, and then on until the time I left, in 1868.

Q. 4. Please state, if you recollect the circumstance, when iron double-shovel bent-beam plows first came into that section of country. If so, what place was credited with their origin?

A. I don't recollect it particularly; I recollect seeing the plows at Freeport. I can't recollect now of their being a new thing—nothing to cite my memory to that.. I recollect nothing of what place was credited with their origin, only I recollect the plow, and mind that they were marked as made at Cadiz.

Q. 5. Where did you first see a bent-beamed, double-shoveled iron plow?

A. I don't know as I could be positive. I mind seeing them at Freeport, at Green's store, but whether that was the first or not I can't recollect.

Q. 6. Do you recollect whether the first you ever saw or heard of came from a distance?

A. No; I couldn't recollect that.

Q. 7. Do you recollect whether those plows were made and sold at Smyrna before you ever saw or heard of them elsewhere?

371 A. My recollection is that they came from other places and were sold there before they were made at Smyrna. I can't recollect about their being made there at Smyrna.

Q. 8. Were you acquainted with the Gilmores, who blacksmithed there prior to 1854? If so, how well acquainted?

A. Yes, sir; I was not particularly intimate; often had conversation with them there at town.

Q. 9. Did you or not make it a point to keep yourself well posted as to what was being done in the plow business in your section?

A. Yes; I think I was well acquainted with that business.

Q. 10. If the Gilmores had been the originators of the double-shovel bent-beam iron plow, and had made and sold them at Smyrna for several years before they ever came from elsewhere, would you have known of it?

(Objected to as speculative.)

A. I am very certain that I would have known of it.

Q. 11. Did you ever hear it asserted or intimated by anybody that the Gilmores were the originators of that plow, or that they were the first to make them?

A. I never did.

Q. 12. If James Gilmore should assert that he was the originator of that plow, and that he made and sold them at Smyrna before they were ever made elsewhere, and years before they ever came from elsewhere, what would you say of such an assertion?

(Objected to as incompetent and irrelevant, and likely to mislead the witness, not being a proper representation of Gilmore's testimony.)

A. To the best of my knowledge and remembrance it would be incorrect.

Q. 13. Were you not engaged to any extent in blacksmithing at Smyrna? If so, when?

372 A. Never, to any extent. Out where I live, nearly a mile from

Smyrna, I did my own blacksmith work during all the time I stayed there, from 1847 to 1868.

Cross-examination:

Complainant's counsel, under protest made, proceeds to cross-examine.

X Q. 14. While a huckster between Wheeling and Smyrna, did you ever buy or sell a double-shovel iron plow?

A. Not to my recollection.

X Q. 15. When did you first see one at Green's store?

A. I couldn't give any idea of the date.

X Q. 16. You do not recollect, do you, their ever being introduced into that part of the country as a new thing?

A. No; I can't cite my memory to anything definite about that.

X Q. 17. When, as nearly as you can recollect, was it that the Gilmores left Smyrna?

A. I couldn't tell anything near the time it was.

X Q. 18. Do you recollect whether they ever made double shovel iron plows at Smyrna or not?

A. To the best of my recollection I never knew that they did.

X Q. 19. Should James Gilmore state that he made and sold these plows before he left Smyrna, what would you say to such a statement?

A. I could just say that I don't remember it, nor know enough to dispute it, nor say that it was so.

X Q. 20. Are you the Jesse Romans who wrote a letter to William Romans, of Smyrna, week before last, February 24?

A. Yes, sir.

X Q. 21. Have you received any reply from William Romans?

A. I suppose this is a reply to it:

373 SMYRNA, O., 2d *March*, 1877.

JESSE ROMANS, *Cardington, O.:*

We don't claim that the Gilmores invented a plow while here in Smyrna, but that they made double-shovel iron plows here from 1849 till the time they left here. Besides myself, the following named persons have stated the same [I write this that you may think over the matter and perhaps there may something recur to your mind which may remind you of what we are well satisfied is correct]: E. J. Phipps, John M. Bendure, John Phinecie, Gustavus Brown, Jonathan Dick of Londonderry, Amzi McNamee, Uncle John Romans. All these remember seeing these plows at Gilmore's shop before Gilmore left, and are very positive.

Yours respectfully,

WILLIAM ROMANS.

(Letter objected to as not in cross-examination, and as highly improper at this stage of the proceedings.)

Redirect examination:

Q. 22. When did you receive the above letter from William Romans, and from whom did you receive it?

A. To-day, and from this gentleman, Mr. Stem.

Q. 23. Are you familiar with William Romans' handwriting, and do you recognize this as his handwriting?

A. Some acquainted with it; I should say this is not his handwriting.

Recross-examination:

X Q. 24. At whose solicitation did you write the letter to Mr. William Romans?

(Counsel for complainants says that he himself asked Mr. Jesse Romans for the letter referred to in the question, and that it was obtained after Mr. William Romans had said at Mr. Hollett's that
374 he was willing his testimony should stand or fall by what Mr. Jesse Romans and Geo. B. Smith should say, and he gave it to William Romans, hoping he might, in accordance with the spirit of his assertion, admit he was probably mistaken.)

A. Mr. Leggett's solicitation.

(Counsel for defendants states that he asked William Romans to reply to the letter written to him by Jesse Romans; that the letter read by the witness he received from Mr. William Romans sealed and so delivered it to the witness; that he knows nothing more as to the origin of the letter.

Complainants' counsel does not question the statement as made, but further objects to the letter that at least so far as regards John Phenecie, Gustavus Brown, Jonathan Dick, and John Romans, the letter sets forth facts exactly contrary to what complainants learned from the same parties personally; but Amzi McNamee they did not see, being absent from his home.)

JESSE ROMANS.

Testimony of George B. Smith.

GEORGE B. SMITH, being called and duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. George B. Smith; age, sixty-three years; residence, Cardington, Ohio; occupation, farmer.

Q. 2. Did you ever live at Smyrna, Ohio; if so, when?

(Counsel for defendants objects to the examination of this witness, as the complainants' time for taking rebutting testimony expired March 1, 1877.)

A. Yes; I went there in spring of 1836; moved about a quarter of mile from town in 1854; up to that time I lived right in town,
375 and think I never was out of the town more than a week at a time, except once for about two weeks in 1851. I moved here in 1863.

Q. 3. What was your business at Smyrna?

A. From 1836 to about 1845 I was keeping tavern; then I worked at my trade from that time; I worked at carpentering when I could, and then in the other times I would make plows, harrows, sleds, cupboards, repairing wagons, etc. I quit my carpentering in 1850, and in 1851 I bought me a small farm which extended along three sides of the town adjoining it. I farmed and leased until 1854?

Q. 4. What kind of plows did you make at Smyrna?

A. I made them after the pattern of what were called "Hole-in-the-ground" plows. I didn't make many—only what were called for; did not pretend to make it a business; these were wooden plows, with diverging beams; beginning about 1848 or '49, possibly 1850, and up to the time I gave up the shop.

Q. 5. Were you acquainted with Mr. Gilmore, and James Gilmore, his son, who blacksmithed there prior to 1854? If so, how well?

A. Yes; I was intimately acquainted with them; Frank Gilmore and

me were intimate friends from the time he first came there, and extended up to the time he left. I moved them from Smyrna to Zanesville, when they started for the West to take the train.

Q. 6. Where was your shop located, as respects Gilmore's shop?

A. Under what is now Dr. Hall's house; Gilmore, for a part of the time I was there, had his shop the first house below Hall's, and before that a couple of houses above me, and finally nearly opposite, but a little above my shop.

376 Q. 4½. What were the Gilmores engaged at, say, from 1846 to the time they moved away from Smyrna?

A. Blacksmithing, custom work for farmers, ironing wagons, &c., and made some edge-tools, too; chisels, adzes, &c.

Q. 5½. Did they make double-shovel iron bent-beam plows?

A. No, sir; not that I ever seen.

Q. 6½. If they had made and sold said plows, what were your facilities for knowing of it?

A. Well, I was in the shop every few days all the time—a big share of the time I had all my work done there, and before I had much work to do at home it was my principle loating place; I would go in and talk with Frank—I always felt interested in what he was at; I recollect the old man got up a plan for a tire bender, and I got up the patterns for him to get the castings from.

Q. 7. Did you ever know or hear of James Gilmore, or of either of the Gilmores, getting up or making or selling any iron double-shovel bent-beam plows?

A. No, sir; I did not.

Q. 8. What place was credited with the origin of the double-shovel bent-beam plows in that section of country?

A. Cadiz. Laizure & Slemmons were credited with it.

Q. 9. Where was the first iron double-shovel bent-beam plow that you ever saw or heard of?

A. I am not positive where first, but I am quite positive it was at Cadiz, in Laizure's shop, but about that time I saw a load of them that a man had brought from Cadiz, and he called to me, when I was plowing with the Hole-in-the-Ground plow, and he said "Let me sell you a plow that won't wabble so," and I went to the road and talked with him.

377 These two circumstances were close together, and are the first I recollect of the iron plows, and it was some time after I had moved out onto my farm.

Q. 10. Did you know Slemmons and Laizure? If so, did you know of it at the time the Cadiz plow was gotten up?

A. Yes, I knew them, and I knew of the first of the Cadiz plows that came out to the public.

Q. 11. Was the iron plow a new thing to you at that time?

A. Yes, sir; it was a new thing.

Q. 12. Did you ever have any talk about that time with Slemmons or Laizure regarding it?

A. Nothing further than any talk we might have had when I was in the shop with them. I have a faint recollection that I represented to them the difficulties in the wooden plows—their being too square.

Q. 13. Are you positive that up to that time that the Cadiz plows came out the Gilmores had not made and sold such plows in Smyrna?

A. Never that I ever saw or heard of. Am positive as to that.

Q. 14. If Gilmores had made and sold such plows in 1848, '49, '50, '51, and '52, and '53, before such plows were ever made at Cadiz, would you have heard of it?

(Objected to as before.)

A. Yes; I would have heard of it; they couldn't have made such a plow and got it out of the shop between the times I was in there.

Q. 15. If John C. Phillips had had such a plow there at Smyrna, made by Gilmores before such plows came from Cadiz, would you have known of it, and why?

(Same objection.)

A. I would have known of it as a new thing, and especially if
378 got up by the boys; it appears that such a thing would have been noticed by anybody, and I know as well as I know anything that they never made such plows before the Cadiz plow came out, and I think they never made any afterwards. I am perfectly confident that they never made any before the Cadiz plow came out, because I was in the shop very frequently and knew them very well.

Q. 16. Do you recollect when it was that one William Griffith made threshing machines at Smyrna? Also state whether he made them there during any other seasons.

A. Yes, from April 27th to September 14th, 1850; I have his account for board here in my book; he boarded with me at the time. I think he made them at no other seasons; that is my impression.

Q. 17. In what direction from Smyrna is Broadus Bethel's house and property?

A. Northeast, a little over a mile.

Q. 18. Did he have any property between Smyrna and Londonderry?

A. No, sir.

Q. 19. On what road did you leave Smyrna when you moved Mr. Gilmore's folks away?

A. On the road leading through Londonderry.

Q. 20. Was James Gilmore possessed of more than ordinary inventive ingenuity?

A. I don't think he was; he was too young, for one thing, to show very much of it, at any rate.

Q. 21. Please state when it was that Broadus Bethel's house was built.

A. I can't state positively the year, but from the best I can make out from my books, comparing my accounts with Mr. Bethel's, and
379 recollecting conversations I had with Mr. Bethel, and my occupation at that time it was being put up, it must have been in 1853.

Under the foregoing protest, counsel for the defendants proceeds to the

Cross-examination:

X Q. 22. How old was James Gilmore when he left Smyrna?

A. The only way I can come at it is—he was a lad running barefoot when he came, about five years old, I think. They left in 1853, and they were there in January, 1839; that is the first accountthat shows in my book. Some of my book is torn out before that.

X Q. 23. Please state more particularly the character of your work as a carpenter while at Smyrna.

A. As to the kind of work it was mixed—sometimes a house, oftener a barn than a house; work was scarce, and people were careful.

X Q. 24. When engaged in this kind of work, would you not usually leave home Monday and return Saturday night?

A. As to that, most of my work was in the immediate neighborhood, so I would come home, if within three or four miles, in the middle of the

week, and no matter how far away, I was always at home Saturday night.

X Q. 25. How large a portion of the year would you be at that kind of work?

A. Generally from the fore part of April till October, and sometimes later, and during the rest of the year I worked in the shop, and did more cabinet work in the shop than any other, after the first or second winter.

X Q. 26. When did you first make a double shovel wooden plow?

380 A. I can't say certain, but my impression is in 1848 or 1850, somewhere there. I think I made a dozen all together; never made one except it was engaged; didn't make a business of it. I saw the iron plows that I referred to as being peddled there, I think, in 1855, but won't say positive. I think I saw them before that at Laizure's shop; that is my impression. It must have been about the second season after I moved onto my farm, north of town.

X Q. 27. You say you "knew of the first of the Cadiz plows that came out to the public;" please explain your meaning.

A. I mean the first that came into our town, or township, or that part of the county. If there was a new plow or anything of the kind came out I was pretty sure to see it.

Redirect examination:

Q. 28. In answers X Q. 24 and X Q. 25, you say your principle carpenter work was in the immediate neighborhood; where did you spend your evenings when doing such work?

A. Generally at my employer's home.

Q. 29. Were you so intimate with Mr. Frank Gilmore that you regarded him as a chum?

(Objected to as not properly in redirect.)

A. I regarded Mr. Gilmore as a special chum. We were especially friendly all the time he was there, and corresponded with him for years after he left.

G. B. SMITH.

381 STATE OF OHIO,
County of Hamilton, ss:

I, Arthur Stem, a notary public in and for the above named county and State, certify that John Bendure, C. G. Kennedy, John Romans, Jesse Hall, James R. Smith, William G. Smith, William K. Smith, William Matthess, Thomas Green, William Hollett, Alonzo F. Hubbel, Wells W. Leggett, Andrew S. Steele, Edward Carpenter, A. T. Hogue, William P. Brown, Jesse Romans and George B. Smith appeared before me, and being duly sworn or affirmed, testified as above. That these depositions were reduced to writing in my presence, and that I act as notary by consent of counsel in the above entitled cause.

In testimony whereof I hereto attach my notarial seal this 5th day of March, 1877.

[NOTARIAL SEAL.] ARTHUR STEM.

382 *Testimony.*

Depositions of witnesses taken in an action pending in the United States circuit court for district of Kentucky, wherein L. L. Leggett et al. are plaintiffs and B. F. Avery & Sons et al. are defendants, and for said defendants, at the time and place hereinafter mentioned.

Leverett L. Leggett, esq., was present as attorney for plaintiffs, and

Arthur Stem, esq., as attorney for defendants, representing Hatch & Parkinson, their solicitors.

Testimony of Elijah Laizure.

ELIJAH LAIZURE, of the county of Harrison, and State of Ohio, of lawful age, being by me first duly sworn, as hereinafter certified, deposes as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is Elijah Laizure; am sixty-five years old; reside in Cadiz, Ohio, and am engaged at present in the grocery business.

Ques. 2. Where did you live, and at what were you engaged, between the years 1850 and 1860?

Ans. I lived in the town of Cadiz, Ohio, and was engaged in blacksmithing.

Ques. 3. Are you the Elijah Laizure who wrote to the Patent Office in 1854 or 1855, objecting to a patent being granted to Mathew G. Slemmons for an iron double-shovel plough?

Ans. Yes, sir.

Ques. 4. Please give a full account of that invention, and a full history of everything done or effort made to obtain a patent for said double shovel plough.

Ans. Before any application was made for that patent, Mr. Slemmons and I, the patentees, were blacksmiths, working at Cadiz, each carrying on a shop for himself; a part of the business of each being to make and sell the ordinary wood frame double-shovel plough, then and still in general use. The wrought-iron beam-turning plough made by
383 Hall & Spear, of Pittsburgh, Pa., was then in use, and had been for years, the beam being constructed of one piece, and bent in the form substantially shown in the Slemmons' drawing, and we were both selling them. It occurred to me that I might make an iron beam double-shovel in this method, and thus secure a better implement and a higher price, with larger profit to myself. With this idea, I suggested the matter to Mr. Slemmons, who accepted the suggestion, and both went to work to complete a shovel. After some comparisons in the progress of our work, a shovel was completed containing the idea of both, but Mr. Slemmons, covertly and without my knowledge, applied for a patent through John A. Bingham, of Cadiz, to which proceeding I protested in writing, as soon as the matter came to my knowledge. We then made a written agreement by which I was to have one-half of the patent, and pay one-half the expenses. The application was rejected. Thus the matter stood for some three or four years; Slemmons abandoning the intention of obtaining a patent. We each continued, however, to make the ploughs, and almost every other blacksmith, to my knowledge, also commenced making them after our pattern; among these was Brown, of the Brown-Manly Plough Company. Some time in 1854, '5, or '6, a person, whose name or residence I do not now remember, came to us, and offered us $100,000 for the invention, properly patented. Slemmons, however, declined doing anything more in reference to obtaining a patent, and I undertook to secure the issue of the patent, which was done through Munn & Co., but upon the papers originally filed. Some time after that, a power of attorney, signed by Slemmons and myself, was given to Mr. Brown, of the Brown-Manly Plough Company, authorizing him to sell territory and rights under our patent. Mr. Brown wanted to have a reissue of the patent, because, as he claimed, he could make no sales, by reason of the fact that, as it then existed, the

patent was valueless. We never made any attempt, to my knowledge, by suit, to enjoin the making of the ploughs by unauthorized persons, or to collect any royalty from them. A few, however, did pay upon
384 being threatened with suit. We have received very little for the patent in any way.

(Counsel for respondents here offers in evidence copy of contract between Laizure and Slemmons, which is hereto attached, marked Respondents' Exhibit A.)

Ques. 5. I now show you a copy of the contract marked Respondents' Exhibit A, and ask you if the same is a correct copy of the original contract made between you and Mr. Slemmons, and if there were any other papers or contracts between you and Mr. Slemmons?

(Exhibit and question objected to as immaterial and irrelevant.)

Ans. Yes, the copy is a correct one; there was no other written contract between us in reference to the matter.

Ques. 6. Why was that contract made?

(Same objection entered as above, and to apply to all testimony as to this contract.)

Ans. Because I objected to him getting a patent on the ground that I believed that he was not entitled to it.

Ques. 7. Why did you believe he was not entitled to it?

Ans. I proposed the manufacturing of them first to him. I first conceived the idea of making them of iron; at least I was the first one who spoke of it.

Ques. 8. When you first spoke of it to Slemmons, had he, so far as you could tell from any conversation, thought of making ploughs in this way, or was the idea entirely new to him?

Ans. I think in was new to him, for he said he thought we could make them of iron.

Ques. 9. Did he acknowledge you to be the one who had first conceived the idea? Either to you or by his actions?

Ans. I don't know anything further than he agreed to this contract to give me half of it.

Ques. 10. What did you suppose at the time was Slemmons' reasons for agreeing to give you half of the patent?

(Objected to as immaterial and incompetent.)

Ans. I supposed he thought I was entitled to all of it, or at least one-half.

385 Ques. 11. Did you ever make an application for a patent on that plough, or contemplate making an application for a patent on it?

Ans. I intended to make an application.

Ques. 12. Why did you not do it?

Ans. Slemmons had made an application first, and I objected to it on the grounds that I believed that I was the originator of it; but that matter was settled between us by this agreement. He made the application without my knowledge, and I thought the easiest way out of it the best.

Ques. 13. After the application had been rejected, did Slemmons make any further effort to obtain a patent?

Ans. Not to my knowledge.

Ques. 14. Did you say anything to him when you made your application through Munn & Co.?

Ans. Yes; we talked that matter all over, and he told me to go ahead.

Ques. 15. Had he given up the idea of getting a patent after the rejection?

(Objected to as incompetent.)

Ans. I guess he had. He let it lay there, and did not intend to push it any further, from the way he talked to me.

Ques. 16. Why did you not have the patent issued, when it finally was issued, either to yourself alone, or to yourself and Mr. Slemmons as co-inventors?

Ans. That was to save expense of a new application. I wrote to Munn & Co., and sent them five dollars and a model to know whether it could be patented or not. This was three or four years after the rejection. They answered that, if they made a new application on my model, they would charge twenty-five dollars, whether they got a patent or not; and if they put the application through that had been made, they would not charge anything unless they got a patent; if they did, then twenty-five dollars.

Ques. 17. How long had you and Mr. Slemmons been making these iron ploughs before his [Slemmons'] application for a patent?

Ans. I think the first iron plough I made was in 1853; that would be about two years.

Ques. 18. What part of 1853 was it?

386 Ans. Probably in May or June.

Ques. 19. Do you remember if Slemmons had made any previous to that time?

Ans. I think not.

Ques. 20. Is your recollection clear as to these dates?

Ans. My recollection is from my books and this contract. I have no other way of remembering them, and could not recollect them but for my books.

Ques. 21. How did you keep your books; did you keep an account of all ploughs sold, or only those not paid for?

Ans. Only those not paid for.

Ques. 22. Then the first entry of a plough of this kind as sold by you occurs in 1853, does it?

Ans. The first entry occurs in 1854, but I got up ploughs before that; used them in the spring of 1853 to see if they would work right.

Ques. 23. Then the ploughs sold previous to this entry were probably paid for when bought, were they, and no entry made?

Ans. I can't find any entry of those I recollect of selling before.

Ques. 24. So far as your books are concerned, then, even if you had sold ploughs as early as 1850, 1851, or 1852, and they had been paid for in cash, there would be no entry in your books?

Ans. There is none. No.

Ques. 25. Do you remember Elgie Scott, now of Cambridge, O., who formerly had a foundry here?

Ans. Yes, sir.

Ques. 26. Do you remember whether you were making these iron double shovel ploughs before he went away or not?

Ans. I don't remember.

Ques. 27. I now show you complainants' exhibit (original model) and ask you if the plow you proposed to Slemmons to make, and that you and Slemmons made as early as 1853 or 1854 at least, had the iron beams converging in front and bent at the rear to form shovel standards, as shown in this model?

387 (Objected to as leading and as containing an assumption of fact.)

Ans. Yes; just the same.

Ques. 28. What kind of ploughs had you been making previous to this time?

Ans. The wooden double shovel plough, with beams like this, but not bent. The standard was mortised on; the beams converged in front.

Ques. 29. How long had you made these wooden ploughs?

(Objected to as immaterial.)

Ans. Three or four years; don't know exactly without examining my books.

Ques. 30. What was the difference between the wooden plough and the iron one, except the difference in material?

Ans. No difference in principle at all, only in shape of the material. The wood we could not bend, and the iron we did.

Ques. 31. Did you ever try to prevent, by suit, any one else from making these ploughs?

Ans. No, sir.

Cross-examination by L. L. LEGGETT, Esq.:

Cross ques. 32. Have you ever recorded, or attempted to record, the contract referred to between yourself and Mr. Slemmons, a copy of which is marked Exhibit A?

Ans. I did not; did not think it was necessary.

Cross-ques. 33. Did Mr. Slemmons ever execute any assignment to you according to that contract?

Ans. Nothing more than that article.

Cross ques. 34. How long after you knew that Slemmons had applied for his patent was this contract drawn?

Ans. I can't tell exactly. I had laid in my objections and got an answer, but do not know how long that took. When I got the answer, I "came at him," and we made the contract.

Cross ques. 35. Where was it that you first saw a plough like the one in dispute that was made by Mr. Slemmons?

388 Ans. I expect it was at his blacksmith shop.

Cross ques. 36. Do you remember at that time who was present in the shop?

Ans. No, sir.

Cross-ques. 37. Do you remember how Mr. Slemmons had constructed his plough? and if so, please describe it. In what respect was it similar to complainant's exhibit (original model), now shown you?

Ans. It only differed in having wooden handles instead of iron ones.

Cross ques. 38. How did Slemmons' plough strike you at that time? Give your ideas.

Ans. I thought it would work.

Cross-ques. 39. I understand you to mean that this plough appeared to be a good idea, and an improvement over anything you had ever seen. Am I correct?

Ans. Yes, of course. That is the reason why we got it up.

Cross-ques. 40. Was Slemmons' plough finished when you saw it, so that you could get a perfect idea of the invention?

Ans. The invention was the getting up the plough, and I did not go to Slemmons to get up any invention. I just laid down one of my wooden ploughs, and bent the iron to suit it.

Cross-ques. 41. Was this plow the first of the kind that you had ever seen? I refer to the one you saw at Slemmons' shop.

Ans. I suppose I saw the one I made first.

Cross-ques. 42. Do you mean that about the same time you first saw this plow of Slemmons' you made a plough of your own similar to it?

Ans. I can't tell that; I might have made them before.

Cross ques. 43. You do not recollect, then, do you, whether you made your first plough before or after the time that you saw the Slemmons plough referred to?

Ans. I think they were got up about the same time.

Cross-ques. 44. Will you positively swear that you ever made
389 an iron double shovel plough similar to the Slemmons plough in question before you saw Slemmons' first plough?

Ans. I think that I had ploughs of my own make at the time that I saw Slemmons'; this is to the best of my knowledge. I cannot swear, only to the best of my knowledge.

Cross-ques. 45. In what year did all this happen?

Ans. I think in 1853, to the best of my knowledge.

Cross-ques. 46. What, if any, suggestions did you make to Slemmons when you saw his plough?

Ans. Did not make any that I know of.

Cross-ques. 47. Did you not criticise it?

Ans. I don't criticise others' work when I come across it.

Cross-ques. 48. Did you not criticise it?

Ans. Not that I know of; he was a good workman.

Cross-ques. 49. After writing to the Patent Office, as you did, subsequent to the application of Slemmons, denying and disputing his claim as the inventor of the plough in dispute, did you not shortly thereafter (within a month or so) write another letter to the Patent Office relative to the same application, stating that matters had been amicably settled, and that you therewith withdrew your opposition and objection to Slemmons' claim and application?

Ans. I wrote to the Patent Office stating that this matter was settled between us, in regard to him getting a patent. This is about all I can now remember of the letter.

Cross ques. 50. As a matter of fact, is it not true that you did voluntarily withdraw all objections and opposition to Slemmons' said application?

Ans. I did, after this article of agreement was written between us, of course.

Cross ques. 51. And this article of agreement you intended and expected should give you a half interest in Slemmons' patent when granted; is this so?

Ans. Yes, sir.

Cross ques. 52. And at this time you claimed to be as much the inventor of that plough as Slemmons, did you not?

390 Ans. A little more, by suggesting to Slemmons that we could make them of iron.

Cross-ques. 53. Had not Slemmons already constructed the plough beams and standards of iron before you made this suggestion?

Ans. Not to my knowledge.

Cross ques. 54. You knew, did you not, at the time that you made this written contract with Slemmons, that he already had an application in his own name alone for a patent upon the plough in dispute?

Ans. Certainly I did; that was the reason I made the objection.

Cross-ques. 55. Did you know that in that application Slemmons had made the usual required oath, that he was the sole and original inventor of that plough?

Ans. I knew that was an oath that a man had to make out when he made an application, but did not see his.

Cross-ques. 56. You supposed, however, that he had made this oath, did you not?

Ans. Oh, yes; I knew that a man could not make an application for a patent in any other way.

Cross-ques. 57. Did you not also know that any instrument or deed was by law invalidated by a false oath?

Ans. I knew such an instrument could be set aside if it was proven to be false.

Cross-ques. 58. Had you any proof to establish the fact that you had any claim as an inventor in this plough at that time?

Ans. I had my own evidence, and think I could have proved by Slemmons that I made the suggestion to him first, or he never would have entered into that contract with me.

Cross ques. 59. Are you and Slemmons the only witnesses you could bring forward to support your claims as an original inventor to this plough in question?

Ans. I don't know about that; you may find out something else. I don't recollect all who were about.

Cross ques. 60. Then you do not at present recollect any one
391 besides yourself and Slemmons whom you could bring forward as witnesses to support your claims to the invention in question, do you?

Ans. I don't remember now; there may be some.

Cross-ques. 61. But when you made this contract with Slemmons you professed to know that Slemmons was aware that you as well as himself was an inventor in this plough?

Ans. Yes; I knew it from the conversation we had about it after he had made the application.

Cross-ques. 62. Did Slemmons actually admit that you were an inventor of the plough in dispute?

Ans. I don't know that he admitted it in so many words; only by giving me the one-half of the patent.

Cross ques. 63. Did he, Slemmons, ever offer you any interest in the patent before you threatened to make trouble for him in the Patent Office about his application?

Ans. No; I don't know that he ever knew anything about me objecting to him getting a patent until I wrote to the Office.

Cross-ques. 64. Did you never give Mr. Slemmons to understand that you might give him trouble or difficulty in the matter unless you had an interest in it?

Ans. Don't recollect of saying anything about it. As soon as I found out that he had made an application, I wrote to the Patent Office objecting to him getting a patent on that plough, and probably stating my reasons.

Cross ques. 65. Then if Slemmons never actually admitted that you were an inventor in this matter, as you state, what led him to make that contract to give you an interest in the patent?

Ans. I don't know anything about that.

Cross ques. 66. Don't you recollect any more than this about the circumstances attending the contract?

Ans. I don't recollect any more now.

Cross-ques. 67. Then how do you know but that Slemmons made that contract, not because he admitted that you had any right as an inventor, but only as a matter of policy to avoid difficulty?

392 Ans. I know because I stated to him what I have stated here,

that I suggested the idea to him, and we went to work and worked it out.

(Questions as to what motives may or may not have actuated Slemmons here objected to by defendant's counsel as incompetent and irrelevant.)

Cross-question 68. Did you know that Slemmons was getting up his plough before you saw it at his shop as stated?

Ans. I heard it.

Cross-ques. 69. Did you know what kind of a plough he was getting up; was it described to you?

Ans. An iron double-shovel plough. I only heard that description of it.

Cross-ques. 70. Did you have any idea what it looked like before you saw it the first time?

Ans. No.

Cross-ques. 71. If you knew and could show that the application for a patent upon this plough was made in Slemmons' name alone, and would issue to him alone after the withdrawal of your opposition in the Patent Office, and if you knew that Slemmons was aware that you, as well as himself, was an inventor of the device set forth in his application, and if you knew that proof of these matters would invalidate a patent, if granted to Slemmons on said application, why, if you had any, did you voluntarily withdraw your opposition, abandon all independent claim to the invention, and in lieu thereof accept an interest in a patent which, if granted, you knew to be worthless in law?

(Objected to by defendant's counsel on the ground that the witness answered the question on his examination-in-chief, when he said he thought the easiest way out of the difficulty or controversy was the best.)

Ans. I did not know it would be worthless in law. I thought if I could get a half interest it would save me a good deal of trouble, and would answer my purpose.

The further examination was continued until 8 o'clock a. m. to-morrow, Thursday, August 24, 1876, by agreement of parties.

D. A. HOLLINGSWORTH,
Notary Public.

393 AUGUST 24, 1876—8 a. m.

Examination continued:

Cross-ques. 72. What part of the year 1853 was it when Slemmons made his first plough?

Ans. I can't tell what time; I suppose in May or June.

Cross-ques. 73. Was the wooden plough that you and Mr. Slemmons had been making prior to that time provided with diverging beams united at clevis?

Ans. Yes, sir.

Cross-ques. 74. How were they united?

Ans. They were riveted together at the point, and then a clevis riveted on over the point.

Cross-ques. 75. Did not these wooden ploughs frequently need repairing on account of loose or broken joints?

Ans. Yes, sir; the plough would strike a root, and often break off the standard.

Cross-ques. 76. Did you know about when Mr. Slemmons commenced getting up his iron plough, the one here in controversy?

Ans. Nothing more, only from hearsay; the same time I commenced. I could still hear that he was getting up one at the same time.

Cross-ques. 77. During the time that Slemmons was getting up this plough, did you not visit or see him in relation to it, and have conversations and discussions about it before it was finished?

Ans. Not to my knowledge.

Cross-ques. 78. During the original term of the Slemmons patent, at issue in this case, did you ever publish any declaration, verbally or otherwise, that said patent was wrongfully issued, or should have been granted either to yourself or jointly to yourself and Slemmons?

Ans. Not to my knowledge or recollection.

Cross ques. 79. When was it that you intended yourself to apply for a patent upon this plough?

Ans. Inside of two years after I commenced to make them.

394 Cross ques. 80. Was it before or after you saw Slemmons' iron plough at his shop?

Ans. Before and after, both.

Cross-ques. 81. How long before?

Ans. I can't tell you.

Cross ques. 82. Could it have been three months?

Ans. I can't tell anything about that.

Cross-ques. 83. Did you have an iron plough, similar to the one here in dispute, actually finished, before you saw the Slemmons iron plough before referred to?

Ans. I don't recollect.

Cross-ques. 84. Then you will not swear positively, will you, that Slemmons did not have his iron plough completed before you made your first plough similar to it?

Ans. I don't swear positively on such long time as that, unless I am positive.

Cross-ques. 85. At any time since the granting of Slemmons' patent in 1860, has Slemmons acknowledged that you were an inventor of this plough?

Ans. Indeed I don't know what he has done. I have not been with him all the time.

Cross-ques. 86. When did Slemmons move away from Cadiz?

Ans. I don't know what year; I have no means of recollecting it.

Cross-ques. 87. Did he not live here at Cadiz several years after 1860?

Ans. He lived here some years, probably a half dozen, more or less. I can't say exactly.

Cross-ques. 88. While he was living here did you not frequently see him?

Ans. I did.

Cross-ques. 89. During that time, or during any time in the original term of the said Slemmons' patent, do you recollect any conversations, discussions, or disputes that you had with Slemmons, or any other party, wherein you claimed, in effect, that Slemmons was not the sole inventor of that plough?

395 Ans. I had none with Slemmons; but you may get that from other witnesses here. I always told them the same tale.

Cross ques. 90. Upon what terms are you now with Mr. Slemmons?

Ans. All right, but a thousand dollars which he owes me.

Cross ques. 91. From your knowledge of all facts attending the early history of the invention, the plough in question, do you believe Slemmons' patent to have been rightfully and properly granted and issued?

Ans. I think it was a good patent, and all right.

Cross ques. 92. Did you ever join with Mr. Slemmons in any application for a reissue of his patent?

Ans. Not to my recollection; I never was asked to.

Cross ques. 93. Were you ever consulted in reference to such reissue?

Ans. I think that Brown wanted a reissue; I heard that, but paid little attention to it.

Cross ques. 94. Prior to the time that Slemmons made his first iron double shovel plough, hereinbefore referred to, do you know if any such description of plough had anywhere before that been known or used?

Ans. I never knew of anything of the kind.

Redirect examination:

Ques. 95. In answer to question 39, you say that you regarded Slemmons' plough as an improvement over anything that you had ever seen: what do you mean by that?

Ans. We had been making the wooden plough. I did not mean that it was superior to any that I made, but that the invention was superior to anything that I had seen; it was not merely the Slemmons plough.

Ques. 96. As I understand from your testimony, when you learned that Mr. Slemmons had applied for a patent, although you knew that you could prove, or thought you could prove, that Mr. Slemmons was not the first inventor, you did not know that the oath he had taken would invalidate any patent he might get, if false, but you thought that if you and he should get into a controversy over the matter
396 that it would involve a good deal of expense, and might result in preventing the issue of a satisfactory patent to either of you, whereas if you and he could arrange the matter between you, it would save the expense and uncertainty, and that you would secure one-half of the entire interest in the patent. Is this correct?

(Objected to as leading, and as a misinterpretation of the witness' testimony.)

Ans. I knew that if he got a patent on his application I could also get one for the same thing, if I could satisfy the Commissioner I was the original inventor. We would then both have patents; and I thought this compromise was the better way to settle it. This was my understanding of the patent law.

Ques. 97. Under these circumstances, what did you suppose would become of Slemmons' patent?

(Objected to as incompetent and immaterial.)

Ans. I though our patents would both be equal in the courts.

Ques. 98. Then you supposed that by making this compromise you could save the expense of a separate application for yourself and really be in the same position, namely, the owner of one-half interest in the invention, as if you had gone to the expense and trouble of proving, to the Commissioner's satisfaction, that you were the real inventor, and not Slemmons, and had thus got a patent in your own name?

(Objected to as leading.)

Ans. Yes, sir, that satisfied me; it was less expense than the other way.

Ques. 99. In answer 59, you say that you don't know whether you could have produced any other witnesses to the fact you were the first inventor besides yourself and Slemmons; were there not quite a num-

ber of men about town who knew more or less about the history of this invention?

Ans. I guess there are—plenty of them, I expect; but I did not hunt them up.

397 Ques. 100. Do you remember of selling a plough to James B. Jamison?

Ans. I don't remember. I sold to almost every one in this country.

Ques. 101. While you and Slemmons were each working on your first ploughs, and before either had been finished, did you ever have any consultation together and talk the matter over, and perhaps compare your ideas?

(Objected to as leading.)

Ans. Not that I recollect of.

Ques. 102. Was Solomon Glass working with you when this plough was invented?

(Objected to as leading.)

Ans. He was working for himself in my shop; was wagon making, and making the wood-work of the wooden double shovel plough.

Ques. 103. For what does Slemmons owe you the thousand dollars referred to in your testimony?

Ans. For the sale of the tail end of the patent right for the iron double shovel plough—my half interest in it.

Recross-examination:

Cross-ques. 104. Referring to Solomon Glass, did you give him to understand that you were the original inventor of the iron double shovel-plough while he was working in your shop?

Ans. I cannot recollect; but am under the impression that he knew all about it. He was in my shop every few hours each day, and I think would soon find it out; it cut off his making good wood-work.

Cross-ques. 105. Were any of these iron ploughs referred to made and sold in this place or vicinity in 1852?

Ans. Not that I can find out.

Cross ques. 106. Would you not likely know it if there had been?

Ans. I think I would likely have had some charged in my books, if there had been any made; I think there were some made in 1853.

398 Cross-ques. 107. Was there any regular business made, in 1853, of making and selling these ploughs?

Ans. We were peddling the wooded plough that year; but I can find no entry in the books of the iron plough for that year.

Cross-ques. 108. In 1853, was Mr. Slemmons engaged with you in the plough business?

Ans. He was not engaged with me; but was engaged for himself.

Cross ques. 109. Do you know whether or not, in 1853, Mr. Slemmons made and sold any of these iron ploughs?

Ans. Am not positive; but it is my impression that he did. We had them about the same time, and they were a success.

Cross ques. 110. Did you and Mr. Slemmons, after 1853, join together in the iron plough business?

Ans. No. We were never together; each one made and sold as many as he could, on his own hook.

Cross ques. 111. You were manufacturing under your grant from Slemmons, were you not? I refer to your contract for a half interest in the Slemmons patent.

(Objected to on the ground that if complainant's counsel means con-

tract, agreement, or half interest, he should say so, and not upon a grant.)

Ans. There was no grant at all; there was no patent. We, each one, manufactured all the ploughs we wanted to, and we did the same after the patent was granted.

ELIJAH LAIZURE.

399 *Respondent's Exhibit A.*

This instrument, made this 14th day of July, 1855, by and between Matthew G. Slemmons and Elijah Laizure, of Cadiz, Ohio, witnesseth that said Slemmons, in consideration of twenty-seven dollars and fifty cents, to him in hand paid by said Laizure, and for the further consideration hereinafter mentioned, agrees hereby with said Laizure that if the said Slemmons shall obtain letters patent for a new and improved double shovel plough of iron and steel, upon his application hitherto made for that purpose, or upon any application which he may hereafter make for such letters patent for such improvement, he will immediately, upon the receipt of such letters patent, guarantee and secure to said Laizure one equal half of the entire right and interest therein of him, the said Slemmons; and the said Laizure further, in consideration of the premises, hereby agrees with the said Slemmons to furnish one-half of the future expenses which said Slemmons may incur in attempting to procure such patent; and if no patent be obtained, said Laizure loses the money herein above mentioned as paid in hand, and also his share of such money as he may hereafter advance for the procuration of such letters patent.

Witness our hands and seals this day and year above written.

M. J. SLEMMONS. [SEAL.]
E. LAIZURE. [SEAL.]

Also MATHEW MCCOY, of lawful age, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. Mathew McCoy; age sixty-two; reside in Harrison County, Ohio, and by occupation a farmer.

400 Ques. 2. I now show you complainant's exhibit, original model, and ask you when you first saw a plough made like it?

Ans. I could not tell when I first saw them; think I saw them when first made, but cannot tell the exact year. I think I saw them in 1852. My brother peddled them before he went away; in the spring, and also the year before. He went away in the fall of 1853. He peddled for Slemmons.

Ques. 3. How long was your brother peddling for Slemmons before he went away?

Ans. He peddled ploughs for him, I think, two seasons.

Ques. 4. What Slemmons was this?

Ans. Mathew G. Slemmons.

Ques. 5. Are you sure your brother went away in 1853?

Ans. I feel very certain that he did, but I might possibly be mistaken.

Ques. 6. Before or after he went away, was the farm he lived on sold?

Ans. Before.

Ques. 7. How long before?

Ans. It was some time in the spring or winter before he went away. He gave possession the first of April. He then moved to town, and remained until some time in September, and then went west.

Ques. 8. What seasons do you think he sold these ploughs?

Ans. I think in 1852 and 1853, but I wouldn't be positive.

Ques. 9. In what year, according to the record of deeds in the recorder's office, was the farm on which your brother lived sold?

Ans. I cannot tell without examining the records.

Ques. 10. Is your brother living?

Ans. No, sir.

Ques. 11. Have you anything to fix more certainly in your memory the time at which he went away?

Ans. Not that I now recollect of.

Ques. 12. Was he the first man you knew of peddling ploughs for Mathew G. Slemmons?

401 Ans. He is the only one I knew of but Mr. Slemmons himself.

Ques. 13. Have you examined the records since answering question 9, and can you now tell the date of the deed for the farm on which your brother resided?

Ans. Yes; it was January, 1853, according to the record. After he sold the farm there he lived until the first of April, and then moved to Cadiz, where he staid until the first of September, and then moved to Illinois.

Cross-examination:

Cross-ques. 14. You state that your brother peddled Slemmons' ploughs; do you not recollect that at one time Slemmons was making a plough, having wooden beams united at the clevis and diverging therefrom, and provided with wooden standards, to which the shovels were attached?

Ans. There were such ploughs made, but I don't recollect anything about Slemmons making them.

Cross ques. 15. Did your brother peddle such a plough?

Ans. I do not know of him doing it, yet he may have.

Cross-ques. 16. Is your recollection sufficiently clear to enable you to swear positively that you saw Slemmons' iron plough, like the exhibit already shown you, in 1852?

Ans. No, sir.

Cross ques. 17. Then it may not have been until 1853 when you first saw this plough?

Ans. I think I saw it in 1852, but am not right positive. I think I also saw it in 1853. I would not like to swear positively that my brother went away in 1853, but feel positive of the fact.

Cross ques. 18. I understand that all these matters transpired so long ago that your memory is indistinct as regards dates, and that you would not swear positively as to them. Am I right?

(Objected to as leading and a misconception of witness' answer.)

Ans. Yes.

402 Cross ques. 19. Whose invention did you understand this double-shovel iron plough to be?

Ans. At the time we understood it to be Slemmons'.

Cross-ques. 20. You state that you think your brother left for the west in the fall of 1853; is not the fall of the year one of the seasons for selling ploughs?

Ans. It might be at some places, but we don't generally sell shovel ploughs at that season of the year here.

Cross-ques. 21. How do you fix the fact, as you state, that your brother peddled ploughs for Slemmons two seasons before he went west?

Ans. I saw him at it; I met him and Slemmons together at it; I met them with a load at Uhricksville.

Cross-ques. 22. May it not be true that your brother moved west in 1854?

Ans. I think not.

Cross-ques. 23. Would you swear that he did not move west in 1854 instead of 1853?

Ans. I wouldn't swear to it, but feel positive that he did not.

Cross-ques. 24. If your brother peddled the Slemmons plough in 1852, what season of the year did he do it in?

Ans. In the spring; I suppose in May or June.

Cross-ques. 25. But you are not sufficiently positive, are you, in your recollections to swear that it was as early as 1852?

Ans. No, I am not.

Re-examination:

Ques. 26. What do you mean by saying you are perfectly positive yourself of a fact, but don't want to swear positively to that fact?

Ans. I feel certain that that was the time he went, but I might posibly be mistaken.

Ques. 27. If you are positive that your brother, James S. McCoy, sold the Slemmons plough two seasons before he went west; if you are positive that he sold his farm in January, 1853, as shown by the re-
403 cords; that he moved into town in April of that year, are you not also positive that he moved west in the fall of 1853?

(Objected to as leading.)

Ans. He moved west in the fall after he moved to town; he moved to town the spring after he sold his farm, and the records say he sold his farm in 1853.

Ques. 28. Can you not then swear positively that he moved west in the fall of 1853?

Ans. I cannot swear more positively to that than I have done.

Ques. 29. Is there any doubt whatever in your mind about it?

Ans. No, there is no doubt whatever in my mind about it; but I might possibly be mistaken, that's all.

Ques. 30. By "the two seasons before he left, he peddled Slemmons' ploughs," you mean the spring of '52 and '53, while he was living in town; the season of the year for selling shovel ploughs is the spring, is it not?

(Objected to as leading.)

Ans. I mean he sold ploughs the two last years when he was here, and the season for selling ploughs is in the spring or early part of the summer.

Ques. 31. Then, by two seasons, you could not mean the spring and fall of the same year, could you?

Ans. No; I mean two different years.

Ques. 32. Do you ever swear positively; is there not always a reservation in your mind that you might be mistaken?

Ans. I have never been called very often as a witness in my life, and believe I never did swear positively to any thing in my life, for fear of being mistaken.

Ques. 33. Where did you live between the years 1850 and 1855, and what opportunity, if any, did you have for knowing who was the first inventor of this iron double-shovel plow?

Ans. I lived on a farm about three miles north of Cadiz, where I now live. The opportunity I had was that Slemmons made the ploughs,
404 was in his shop, saw the ploughs there, and it was understood among the people that he was the inventor.

Recross-examination:

Cross ques. 34. If your brother had peddled Slemmons' ploughs this last spring, and you had as much knowledge of it as you had of his peddling them before, would you not swear positively to it without any reservation?

Ans. Yes, I would have done that, because it would have happened so lately that I could remember it.

Cross ques. 35. At your present age, is your memory clear as to dates twenty years back?

Ans. I think as much so as people generally.

Cross-ques. 36. But when you decline swearing positively as to dates so long ago, and swear with the reservation you have made, is it not because you have reasonable grounds for doubting the accuracy of your memory?

Ans. It is because I am afraid that I might possibly be mistaken, but I don't think I am.

MATTHEW McCOY.

Testimony of Solomon Glass.

Also SOLOMON GLASS, of lawful age, being by me first duly sworn, deposes and says as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is Solomon Glass; age, sixty-two next month; residence, Cadiz, Ohio; and occupation, wagon-maker.

Ques. 2. Where and how were you engaged in the year 1850?

Ans. I was engaged in wagon business in Cadiz, Ohio, and was making ploughs

Ques. 3. Were you connected with Elijah Laizure in any way?

Ans. The only way was that he ironed the wood-work that I made. We both made out our bills and collected them.

Ques. 4. Were you making wooden ploughs at this time?

405 Ans. I commenced making them, I think, in 1850.

Ques. 5. Did Laizure iron these ploughs for you?

Ans. Yes, he ironed the ploughs.

Ques. 6. Were these wooden ploughs a new or old patent?

Ans. They were a new patent in this country; I never saw but one before, probably in 1849.

Ques. 7. In what respect did those wooden ploughs made by you in 1850 resemble the model which I now show you, marked Complainants' Exhibit Original Model?

Ans. It was just exactly the same, only one was made of wood and the other of iron.

Ques. 8. Do you remember when Mr. Laizure first began making iron ploughs like this exhibit?

Ans. The first plough he made of iron similar to this was one plough in 1852. This was the first one made by him, and was the first one made in this country by anybody.

Ques. 9. Why did he not make more than one plough in this year? (Objected to as incompetent.)

Ans. I don't know. The probability is that it was getting late in the

season, and we were in the wooden plough business, and had about one hundred on hand.

Q. 10. What was done with that plough?

Ans. That plough I took to Tuscarawas County, and left it with O'Donnell & Ford, of Uhricksville. They sold it on commission; at least Laizure got the money for it.

Ques. 11. What became of this firm?

Ans. According to what I have heard they broke up and went out of business; have since heard they are both dead.

Ques. 12. What enables you to fix the date of this plough in 1852?

Ans. The reason that I fix that date is that I was then engaged in making the wooden plough, and it was while I was engaged in it this iron plough was gotten up.

Ques. 13. Did you take any wooden ploughs to Uhricksville on this trip?

406 Ans. I took a dozen, but did not leave them at Uhricksville: I left them further out in the country, with my brother.

Ques. 14. Did your brother see this iron plough?

Ans. Yes, sir, he saw it. He wanted to keep it, and I persuaded him out of it, as I thought perhaps it was not as good as the wooden ones. The iron plough was short in the handles and pigeon-toed, and I thought it would not work so well. This was my objection to that particular plough; otherwise it was just like the model here exhibited.

Ques. 15. Do you remember any circumstance that occurred on this trip in 1852?

Ans. I don't know any particular circumstance, only that I stopped in and left the plough as I came home.

Ques. 16. Give a history of your business arrangements with Mr. Laizure.

Ans. We were working in the same shop, or rather under the same roof, the shops being joined together, and in 1850 we commenced making the wooden ploughs, and made twenty-five; the next year (1851) we made one hundred, and the next year, in 1852, we made another hundred. In this year he made this first iron plough, and the next year, 1853, we fell back again to the twenty-five wooden ploughs on account of Laizure manufacturing the iron ploughs.

Ques. 17. Can you think of any other circumstance that occurred in 1852 which would remove any doubt, if you had any, as to when Laizure made this first iron plough?

Ans. No; I don't recollect anything further; there is no doubt in my mind about it.

Ques. 18. Of whom did you buy the lumber, or part of the lumber, used in the ploughs that you made in 1852?

Ans. Of John Anderson.

Ques. 19. Are you sure of this?

Ans. I am.

Ques. 20. Did you ever buy any lumber after this for that particular purpose?

407 Ans. No. I manufactured the one hundred ploughs made in 1852 out of it, and had enough left to make the twenty-five in 1853.

Ques 21. Did you buy any lumber of this particular kind before this time?

Ans. No, I believe that I didn't. The reason why I recollect this matter is because I went for it myself.

Ques. 22. Have you any account of the purchase of this lumber in your books; and if so, what is the date of that account?

Ans. I have, and it is dated the 7th of May, 1852. I find, on examining my books, that I did buy some of this lumber of him at a different time, in 1851.

Ques. 23. Have you, or have you not, a good memory for dates and transactions that happened a good while ago?

(Objected to as immaterial and irrelevant.)

Ans. I can't say that I have, unless I have something to fix it in my memory, as a book or something else. When I remember anything at all I remember it tolerably accurately.

Ques. 24. Who was the inventor of this iron double shovel plough for which Mathew Slemmons afterward obtained a patent?

(Objected to as incompetent.)

Ans. Elijah Lazure.

Ques. 25. Please give your reason for that answer, and state fully all you know about it.

Ans. Because he and I were there working together, and I saw him working at it, and the first ones Slemmons made had wooden handles.

Ques. 26. Did Laizure claim it as his invention and say anything about getting a patent on it?

(Objected to as leading.)

Ans. Yes; he claimed it to be his invention, and talked about getting a patent on it, and I think wrote on about it.

Ques. 27. Do you know how Slemmons came to get his patent on this plough?

408 Ans. I do not.

Ques. 28. What was the general feeling of the community on that subject, as far as you know it?

Ans. I don't know that there was much feeling on the subject, except with the parties. The people did not seem to care much about it; they thought as I did—that there was nothing in it. I told Laizure so.

Ques. 29. What do you mean by saying there is nothing in it?

Ans. The reason why was that I thought no person would buy the invention. I had seen him making the plough, and thought others knew as much about it as I did.

Cross-examination:

Cross ques. 30. Between the clevis and the shovels, leaving off the handles, how many pieces of timber were used in the construction of those old wooden ploughs to which you have referred?

Ans. Five pieces.

Cross-ques. 31. Was there not a joint made at the junction of the beam and standard?

Ans. Yes; we called it a tenon and mortise.

Cross-ques. 32. What was the stem you refer to?

Ans. The piece that run down from the beam on which the shovel was attached.

Ques. 33. Was there not an angle formed at the junction of the beam and stems?

Ans. Yes, there was an angle formed to give the shovel the proper direction in the ground.

Cross-ques. 34. Then in these wooden ploughs the beam and stem or standard was not composed all of a single piece of timber and bent under to give the proper pitch to the shovel. How about this?

Ans. They were of different pieces, and framed together as before stated.

Cross ques. 35. Then in that respect the wooden ploughs referred to in your answer to question 7 materially differed, did they not, from the plough shown in the model marked Complainants' Original Model?

409 Ans. They would differ in appearance; that is, they would not strike the eye alike; they were, however, similar; one was made of iron and the other of wood.

Cross-ques. 36. Would not the resemblance be truer if those wooden ploughs had the beam and standard composed of a single piece of wood bent or curved downward to form an attachment?

Ans. Of course it would; it would be a curve instead of a straight line, and a single piece instead of two.

Cross-ques. 37. Did you ever see a wooden plough made like this?

Ans. I did not.

Cross-ques. 38. Were not those wooden ploughs you speak of liable to break at the junction of the stem and beam, and have you not repaired these ploughs thus broken?

Ans. Not very often; they were not as liable to break there as elsewhere.

Cross-ques. 39. Where were they the most liable to break and get out of order?

Ans. Where the brace-rod went through the beam and where the shovel was attached to the stem.

Cross ques. 40. Were the beams not apt to become more or less loose at the clevis?

Ans. I never found any difficulty in that way unless the timber was green.

Cross ques. 41. In 1851 and 1853, were you in the same business as in 1852?

Ans. Yes, sir.

Cross-ques. 42. How as to 1854 and 1855?

Ans. In the same business, with the exception that the plough business had dropped off. I occasionally made one, but very few.

Cross ques. 43. May it not possibly have been in the early part of 1853 when you saw the first double-shovel iron plough that you think you saw in 1852?

(Objected to as incompetent and irrelevant, the witness having testified clearly on that point.)

Ans. No; it was in 1852, I am satisfied.

Cross-ques. 44. What time in 1852?

410 Ans. It was either the last of May or first of June.

Cross-ques. 45. Do you state this from your recollection or from books or memoranda?

(Objected to for same reason.)

Ans. I recollect it from the dates I have in my books and also from recollection of my going out with the dozen ploughs.

Cross ques. 46. Did you know of the iron double-shovel plough that Mathew Slemmons made about this time?

(Objected to.)

Ans. Yes, I believe I do.

Cross-ques. 47. Did you see it before or after you saw Laizure's first?

(Objected to.)

Ans. I saw Laizure's first.

Cross-ques. 48. How long after you saw Laizure's plough was it before you saw that of Slemmons?

Ans. I don't know, but suppose it was the next year; it came out about the same time and I saw it about the time it came out; at least I do not remember of seeing Slemmons' until the next year. I had nothing to do with his business.

Cross-ques. 49. When did you first see Matthew Slemmons' plough, similar to the model exhibit already shown you, excepting that it had wood instead of iron handles?

Ans. I suppose he manufactured all his ploughs for one season, 1853, with wood handles and abandoned this the next. I am not just clear of this.

Cross-ques. 50. You say the first iron plough that Laizure made you took to Uhricksville to be sold by a firm there; when did they sell that plough?

Ans. They sold it in 1852, the same season.

Cross-ques. 51. Do you know that from your own positive knowledge? (Objected to.)

Ans. I think so; unless I am entirely mistaken. I have no dates to refer to, only what I have already referred to.

411 Cross-ques. 52. Did you see it sold, or see anybody who saw it sold, or see anybody who bought it, or do you know whom it was sold to?

(Objected to.)

Ans. No; I don't know that I did or do; only know that Laizure got the money and told me it was for the plough.

Cross-ques. 53. Then all the testimony you can give on the sale of this plough is hearsay; is it not?

(Objected to.)

Ans. That is all I know of that plough after it left my hands; only hearsay, but have no doubt the hearsay was facts.

Cross-ques. 54. You say that Elijah Laizure was the inventor of the plough that Slemmons patented; do you mean by that he was the original and first inventor of it?

Ans. I do.

Cross-ques. 55. How do you know that Slemmons was not the first and original inventor of it, as he swore that he was in his application for a patent?

(Objected to, as witness has testified all he knows on this subject.)

Ans. The reason why is that we were all working here in town, and Laizure got up this plough, and I would have known about it if Slemmons had got up the plough first.

Cross-ques. 56. Is it not a fact that it is only your opinion or impression from what you saw at Laizure's shop only, and from what you heard him say, and not from any positive knowledge whatever of the acts and doings of Matthew Slemmons, that you testify that Laizure was the inventor of the plough that Slemmons patented?

(Objected to as leading.)

Ans. All I believe I do know positively is that Laizure made this plough, and that there was no other iron plough exposed in the market for sale that season but this one.

Cross-ques. 57. But you do not know positively, do you, that at this time, or even before this, Matthew Slemmons may not have had this idea of this iron double-shovel plough and made one at his shop?

412 Ans. I could not tell what idea he had; I think I know he did not make one; it was not exposed in the market. I do not know positively that he had not one in his shop. Of course I do not know whether he had one in his shop or not, or what ideas were in his head.

Cross-ques. 58. Then you will not swear so positively that Slemmons may not have been the original inventor of this plough so far as your actual knowledge goes?

Ans. So far as my actual knowledge goes, I do not. He never said anything to me about it, and I never saw one in his shop before.

Cross-ques. 59. Did you ever hear Mr. Laizure, in 1852 or 1853, or thereabouts, claim that Slemmons was not the inventor of the plough in dispute?

Ans. I am not sure; I think I have heard him talk in that way.

Cross-ques. 60. Did you know at that time of any dispute between Laizure and Slemmons about this iron plough?

Ans. No; I don't know that I did.

Cross-ques. 61. Did you know of any dispute between them about the time Slemmons applied for his patent?

Ans. I can't tell.

Cross-ques. 62. Have you been frequently with Mr. Laizure since Mr. Slemmons applied for his patent upon the plough in question?

Ans. In 1860 I sold out and moved to the other end of the town, and they have neither of them said anything to me about it since then. Prior to that Mr. Laizure and I were together daily, working under the same roof.

Cross-ques. 63. Did you both know of Slemmons' application for a patent on this plough?

Ans. I don't know whether I did or not. Laizure, I know, had got up a model and said he was going to apply for a patent.

Cross-ques. 64. During this time, between 1855 and 1860, do you remember of Laizure ever having complained or protested against Slemmons' action in applying for a patent upon the plough in question?

(Objected to)

413 Ans. I can't tell about that.

Cross-ques. 65. Is it because you do not recollect of any such thing?

Ans. I don't think I ever heard him say anything about it.

Cross-ques. 66. Do you know about when Slemmons first exhibited his iron double-shovel plough?

Ans. About 1853, when he brought it out for use and exposed it for sale. I do not know but he might have commenced making them the winter before.

Re-examination:

Ques. 67. Was the plow made by Laizure in 1852 offered for sale here in town to anybody who wanted to buy it—was it for sale?

Ans. Yes; it was for sale.

Ques. 68. Did Slemmons ever make any protest against Laizure making or selling this or any other iron plough?

Ans. I know he stopped other parties, but never made any protest against Laizure. He stopped other parties since 1860.

Ques. 69. Do you suppose he saw this plough, or knew of Laizure making it?

(Objected to as incompetent.)

Ans. I would suppose he did.

Ques. 70. Were the wooden ploughs made by you and Laizure in 1850 constructed with two beams converging in the front at the clevis, and fastened rigidly together at that point, the same as the iron plow shown in Exhibit Original Model?

(Objected to as leading.)

Ans. They were.

Ques. 71. Was there any difference either in principle or the working of these ploughs and the one shown in said exhibit?

Ans. No.

414 Re cross-examination:

Cross-ques. 72. Do you know anything about the mathematics or the properties of angles and curves, as related to strain or tension?

Ans. No; I don't know that I do, exactly. I make no pretension in that way. I only have an opinion of my own.

Cross-ques. 73. As between two continuous plough beams and standards or stems, in one of which the standard and beam unite at an angle, while in the other they describe a curve or arch, such as shown in the model exhibit you have seen, which construction would be the best able to withstand strain—the curve or the angled one?

Ans. I presume the curve would stand the heaviest strain.

Cross-ques. 74. Then there is some difference in principle between the two, is there not?

Ans. There might possibly be a little difference.

S. GLASS.

Also SOLOMON GLASS, being first duly sworn, as hereinafter certified, deposes as follows:

Ques. 1. Are you the Solomon Glass who has heretofore testified in this case?

Ans. I am.

Ques. 2. Do you remember the James S. McCoy, brother of Martin McCoy, who testified in this case?

Ans. Yes, sir.

Ques. 3. Do you remember when he left here?

Ans. I think in the fall of 1852 or spring of 1853; I think it was not later than 1853.

Ques. 4. Are you sure about it being in the fall of 1852 or the spring of 1853?

Ans. I am not sure, but it strikes me it was in the fall of 1852; but it might have been 1853; cannot say positively.

Ques. 5. Do you feel sure that it was not later than 1853?

415 Ans. I feel pretty positive it was not later than that.

Ques. 6. At what was he engaged in the spring of 1852?

Ans. He was engaged in peddling ploughs.

Cross-examination:

Cross-ques. 7. Who was James S. McCoy peddling ploughs for in 1852?

Ans. That is the question. I cannot tell; either for Laizure and me, or for Slemmons; I am not sure.

Cross-ques. 8. For whom did he peddle first?

Ans. I can't tell that; I cannot get that in my mind.

Cross-ques. 9. How do you get it in your mind that said McCoy left this country in 1852?

Ans. I get it in my mind about him peddling the ploughs and leaving when the business quit.

Cross-ques. 10. Did he peddle any kind of ploughs besides the old style wooden one that you have referred to in your previous deposition?

Ans. Not to my knowledge.

Cross-ques. 11. Do you know that he did not peddle the double-shovel iron plough?

(Objected to as incompetent.)

Ans. Unless I am mistaken about the time he went away, I am certain he did not; if I am mistaken about that, he might have done it.

Cross-ques. 12. Comparing the possibility that he did peddle these iron ploughs with the possibility that you may be in error as to your recollection of the year that he went West, to which would you give the preference?

Ans. He might have peddled the iron plough in 1853; if so, he did not go West till that year.

Cross-ques. 13. From your knowledge of the time when this iron plough was invented, do you think it possible that McCoy or any one else could have been peddling or selling them in 1852?

Ans. No; I think not, except that one that I told you before, the one I took to Uhricksville.

416 Cross-ques. 14. Is there any special incident besides peddling this plough by which you fix your recollection that McCoy went west in 1852 or 1853?

Ans. Nothing else that I can bring to memory.

Cross-ques. 15. If you are so uncertain, then, as to dates connected with these peddling operations, can you be positive that it was not later than 1853 when McCoy went west?

Ans. I have nothing to fix my recollection on it only that peddling operation. I don't know of him being engaged in any other business until he did go west.

Cross-ques. 16. That may be, but are you thus enabled to, and do you swear that it was not later than 1853, when the said McCoy went west?

Ans. That is my impression, and I think I am not mistaken that it was not later than 1853.

Cross ques. 17. Do you know you are not mistaken? That is the question.

Ans. A man is liable to err, but if I was to say anything, I would say I am not mistaken.

Cross-ques. 18. How long did the said McCoy live in Cadiz after he moved in from the country?

Ans. I don't know. I had thought he lived here two years, but they say he lived in the country part of the time, and I suppose I am mistaken, and that he only lived here one year.

Cross-ques. 19. When did you change your opinion about him living here two years?

Ans. I don't know that I have changed my opinion at all; when this thing came up I just thought he lived in town two years, and have changed to think that I might possibly be mistaken since this thing came up; I have not thought about this for a good many years.

Cross-ques. 20. Do you know anything positive about him living here one or two years?

Ans. I can't tell positive whether he lived here one or two years; only know that he lived here.

Cross-ques. 21. Have you had any recent conversation to refresh
417 your memory on this point and on your general testimony relative to McCoy? and, if yea, please state when, with whom, and the substance of said conversation.

Ans. Not until I came into this room, or until last evening, when Mr. Stem asked me about it. The conversation was relative to this McCoy matter; simply inquiries.

Cross-ques. 22. Have you had any conversation about this matter since you left the stand this afternoon?

Ans. Yes.

Cross-ques. 23. Were you instructed what the testimony of Matthew McCoy had been on this point?

Ans. Yes.

Cross-ques. 24. And has not your memory and consequent testimony been materially moulded from said conversation?

Ans. No, sir.

Cross-ques. 25. Haven't you thought differently as to dates and times since that conversation?

Ans. Very little. It might have caused me to think that I might be mistaken about the time he lived in town and the time he went West.

Cross ques. 26. Did you not say this afternoon, prior to that conversation, that the said McCoy lived in town two years, and went West in 1854?

Ans. No; I did not say that. If I did, I have forgotten it already.

Cross-ques. 27. Are you sure you did not say it?

Ans. I think I am sure I did not say it.

Cross ques. 28. If your recollection is uncertain as to occurrences a few hours ago, may it not be quite uncertain as to incidents and facts from twenty to twenty-four years ago?

Ans. The probability is that if it was that uncertain I would not know anything about what occurred so long ago.

Re-examination:

Ques. Were your shop and Slemmons' shop located near together or in separate parts of the town?

(Objected to as leading and not redirect.)

Ans. In separate parts of the town.

418 Ques. 30. Might not J. S. McCoy, while peddling ploughs for Slemmons, have handled or peddled some iron ploughs without you knowing it?

(Objected to as leading.)

Ans. I don't know; such a thing might have been done.

Ques. 31. In the conversation with Mr. Stem, before referred to, did he say anything more to you than that Matthew McCoy thought his brother moved into town in April, and moved West in September, of 1853?

(Objected to as leading.)

Ans. That is what he said to me.

Ques. 32. Have you testified to that effect, or has your testimony been influenced by that statement?

Ans. No; I don't know that my testimony has been influenced by that statement particularly, although I thought his brother might know better than I.

Recross examination:

Cross ques. 33. Is not your recollection uncertain upon all the dates relative to the actions of said McCoy to which you have testified?

(Objected to.)

Ans. No; part of it I can't be mistaken in very much.

Cross ques. 34. What part of it will you clearly and positively swear to without a doubt or reservation? I do not refer merely to facts, but to the dates when they happened.

Ans. I can clearly say that he peddled ploughs for us in either 1851 or 1852.

Cross-ques. 35. Is that all?

Ans. That is all.

Re-examination:

Ques. 36. You say you can swear positively, without any reservation, that McCoy peddled ploughs for you and Laizure either in 1851 or 1852. The year of these two when he was not peddling ploughs for you and Laizure what was he doing?

419 Ans. Part of the time he was peddling ploughs for Matthew G. Slemmons; that is, during the season for selling ploughs that year.

Ques. 37. Have you any doubt as to the truth and accuracy of those statements and dates that you have given in your testimony in this case?

Ans. No; I haven't any doubt about it.

Cross-examination:

Cross-ques. 38. Will your previous answer apply as well to the matter of your cross-examination, and did you intend it to so apply?

Ans. Certainly; I mean it to apply to all that I have said, except where I have expressed doubts.

S. GLASS.

Testimony of Martin S. Kennedy.

Also MARTIN S. KENNEDY, of lawful age, being by me first duly sworn, as hereinafter certified, deposes as follows:

Ques. State your name, age, residence, and occupation.

Ans. Name, Martin S. Kennedy; age, forty-four years; residence, Cadiz, Ohio; and am engaged in lumber and planing-mill business.

Ques. 2. Where were you living between the years 1850 and 1855?

Ans. In Green Township, this county.

Ques. 3. Do you remember when and where you first saw an iron double-shovel plough similar to Exhibit Original Model?

Ans. I don't remember the time.

Ques. 4. Was it earlier than 1855?

Ans. It is my impression that it was.

Ques. 5. Do you remember hearing anything as to who invented that plough?

Ans. Yes, sir.

Ques. 6. Whom did you understand to be the inventor?

Ans. Laizure.

420 Ques. 7. What, so far as you could ascertain from conversations, etc., was the general impression in this community in regard to who was the inventor?

Ans. Laizure was thought to be the man.

Ques. 8. What was the general opinion with regard to the fact that Slemmons had made an application for and ultimately secured a patent for this invention?

Ans. The general opinion, so far as I can remember at this date, was that he had caught the idea from Laizure, and got ahead of him in the patent.

Ques. 9. Was Laizure regarded as very sharp and shrewd in such matters?

(Objected to as irrelevant and immaterial.)

Ans. I don't know. He was regarded as a man of ordinary ability;

Slemmons was about like him. Neither of them very sharp; perhaps Slemmons was a little the sharper.

Cross-examination:

Cross-ques. 10. How far from town did you live when you learned of this invention, and for some time afterward?

Ans. About four miles.

Cross-ques. 11. Why do you think that Laizure, and not Slemmons, invented the plough in dispute?

Ans. My recollection is that Laizure claimed that he invented it, and that Slemmons did not say anything about it.

Cross ques. 12. Did you learn this from Laizure or Slemmons personally?

Ans. I don't know that I did. I was better acquainted with Slemmons than Laizure, but never remember of hearing him claim to be the inventor of the plough.

Cross ques. 13. Did you learn personally from Laizure or Slemmons that Laizure made and claimed the invention, and that Slemmons laid no claim to it? Did either of them tell you so?

Ans. No; I don't recollect anything of that.

Cross-ques. 14. Then your testimony is hearsay, is it not, upon this point?

Ans. I don't know whether it is or not.

Cross-ques. 15. Is it not probably so?

421 Ans. I have not very much impression about it. I don't know whether Slemmons or Laizure or anyone else told me. The impression is in my mind, but I do not know how it got there.

Cross-ques. 16. At the time you refer to, how many parties did you hear express their opinions that Laizure, and not Slemmons, was the inventor of the plough in question?

Ans. I do not now recollect of any.

Cross-ques. 17. Do you mean that no one did express that opinion?

Ans. I mean to say that I do not now recollect who they were. I have the impression in my mind that some one expressed it to me, but I cannot tell who it was; only take it for granted some one did.

Cross-ques. 18. Did many people tell you this, about who was the inventor of the plough?

Ans. I don't know.

Cross-ques. 19. How can you swear, then, that the impression you had was a general impression throughout the community? Are you positive now upon this point?

Ans. I think there was not very much impression made on the community about this matter.

Cross-ques. 20. Are you sure there was any impression made on the community about the matter?

Ans. No, I am not sure that there was.

Cross-ques. 21. Will the same answer apply to the impression that Slemmons got ahead of Laizure, and beat him in this matter?

Ans. I think it will.

Cross ques. 22. Do you know or recollect that Slemmons ever said that he was not the inventor of the plough in dispute, or any such admission?

Ans. No, I don't recollect any conversation with him on the subject at all.

Cross-ques. 23. Did Laizure tell you at this time that he invented this plough?

Ans. I don't recollect any conversation with him either.

422 Cross-ques. 24. Do you recollect any conversation with anyone at this time, who professed to know that Laizure was the inventor of the plough in dispute, and that Slemmons had little or nothing to do with it?

Ans. I don't.

Cross-ques. 25. Do you positively know that Laizure made the first iron double-shovel plough that you ever saw?

Ans. No, I don't.

Cross-ques. 26. Do you know that Laizure ever made such a plough before Slemmons did?

Ans. No, I don't.

Cross-ques. 27. Have you any good reason to believe that Slemmons did not make the first iron double-shovel plough, similar to the one in dispute, before Laizure did?

Ans. No, I have no good reason. My recollection is that they each got up one about the same time.

Cross-ques. 28. Have you any idea, based on good reasons, who got up the first one?

Ans. Not myself.

Redirect-examination:

Ques. 29. Have you any doubt but that you had good and satisfactory reasons for concluding at the time, that Laizure was the first inventor of this plough?

Ans. I did, and do now believe, that he was the inventor, but what makes that impression I don't know.

Ques. 30. You mean you forget, do you?

Ans. I do.

Ques. 31. Have you any doubt that you talked with others and heard others talk about this invention?

(Objected to as having already been testified to.)

Ans. I have no doubt about that, although I don't recollect a word that was spoken.

Ques. 32. I did not ask you if you recollected a word that was spoken.

Ans. I can then say that I have no doubt that I talked to others and heard them talk.

423 Ques. 33. Have you any doubt but that the general impression in the community, so far as you know it, with those you have talked with, was that Laizure was the inventor of the plough?

Ans. That is my recollection from the conversation that was had, that we came to that conclusion, that Laizure was the inventor of the plough.

Recross-examination:

Cross-ques. 34. Is your memory weak and poor upon things that have once become fixed in your mind?

Ans. Upon things that have become fixed in my mind my memory is good.

Cross-ques. 35. Then you consider that you generally have a retentive memory?

Ans. I do.

Cross-ques. 36. Then is it not true that what you have testified in your direct examination about matters and dates therein referred to, is present in your mind as mere dim impressions, and not actual belief based upon a good foundation in memory?

Ans. I believe they are impressions, and not present recollections.

MARTIN S. KENNEDY.

Adjourned, by agreement, to August 25, 1876, at 8 a. m.

D. A. HOLLINGSWORTH,
Notary Public.

AUGUST 25, 1876—8 a. m.

Testimony of William Cady.

WILLIAM CADY, of lawful age, being by me first duly sworn, as hereinafter certified, deposes as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is William Cady; age, seventy-four next month; reside in Cadiz, Ohio, and am not now engaged in any particular occupation.

Ques. 2. How long have you lived in Cadiz?

Ans. Since 1815.

424 Ques. 3. What, if anything, do you know about the invention of the double shovel iron plough shown in Complainant's Exhibit Original Model?

Ans. I returned from California in July, 1852, and was working some at Elijah Laizure's shop in Cadiz afterward. I saw Laizure frequently working at this plough. I think I saw him working at it in 1853 or 1854; am not certain as to dates, but it was at a time when he and Slemmons had some controversy in reference to it. The controversy was as to which had a right to the patent. Laizure claimed the sole right, and I do not know what Slemmons did claim, as I did not hear him make any claim. We frequently talked about it in the shop, and all acquiesced in the idea that Laizure was the original inventor. I think I have heard some people also say that Slemmons made a claim to it, but all seemed to think Laizure was the original inventor. I understood that Slemmons applied for a patent, and that Laizure objected, because he was the original inventor. My understanding was that they settled the matter by each taking an interest in the invention, and I know they both made ploughs and peddled them out here afterward. As far as I can remember, people generally thought that Laizure was the inventor, and that Slemmons took the "snap" on him in getting the patent.

Ques. 4. Have you talked to many persons on the subject?

Ans. Yes; it was then a subject of general conversation among the people, but I cannot now remember their names or the particular circumstances.

Cross-examination:

Cross-ques. 5. How many did you ever hear speak of this invention as being that of Laizure at the time, or within one or two years after you returned from California?

(Objected to, the witness having already testified that he could not remember the particulars.)

Ans. I could not tell that.

Ques. 6. Will you swear that you ever talked to twenty persons at least?

Ans. I could not specify any number.

425 Ques. 7. Fifteen?

Ans. It is too long ago for me to specify.

Ques. 8. Would you now swear that you heard ten people say that Laizure, and not Slemmons, was the inventor of the plough in dispute?

Ans. I would not specify any number.

Ques. 9. Would you take your oath on five?

Ans. That draws it down, and you might draw it down to one, and still I can specify no number. I only know I have heard some people talk about the matter.

Ques. 10. In talking about it, will you at this time positively swear that they said, in effect, that Laizure was the inventor of the plough; that Slemmons was not, and that Slemmons wrongfully appropriated and secured the invention to himself?

Ans. That is my impression, but I will not swear "point blank" to it.

Ques. 11. Where and when did you first see the iron double shovel plough?

Ans. In Mr. Laizure's shop, after I came from California, in 1853 or 1854—along there somewhere.

Ques. 12. Was the plough finished?

Ans. I could not swear that I saw him make the first iron double shovel plough.

Ques. 13. Could you swear that Mr. Laizure did make the first iron double shovel plough?

Ans. No. He made the first one that I ever saw.

Ques. 14. Do you know from your own knowledge that Slemmons had not already made a plough of that description before that time?

Ans. No, sir; I don't.

Ques. 15. Did you ever hear Mr. Laizure protest or complain against Mr. Slemmons relative to this plough, at or about the time when you first saw it?

Ans. About that time I have, or shortly afterward.

Ques. 16. What did he say?

Ans. That he was the original planner of the plough.

Ques. 17. Did he say anything about Slemmons having little or nothing to do with it as an inventor?

426 Ans. I could not tell just the conversation; but that is my opinion. I got that impression.

Ques 18. Then you have no definite recollection of such conversation—only an impression?

Ans. I recollect of having conversations with Laizure; I was opposed to Slemmons getting the patent from what I knew.

Ques. 19. What did you actually know that you should be opposed to Slemmons?

Ans. From observations in working in the shop.

Ques. 20. You have already sworn that you did not know that Slemmons did not make the first iron double shovel plough; if you were ignorant upon that point, how do you know that Laizure had any rights whatever to the invention?

(Objected to, the witness having sworn only as to his belief, and to the best of his knowledge and information.)

Ans. They had a controversy, and I was there and saw Laizure tinkering and working at it to get it right, and thought he was the inventor, and not Slemmons.

Ques. 21. Did you visit Mr. Slemmons at this time to ascertain about the invention, or did you question him about it?

Ans. No, sir; I did not.

Cross-ques. 22. Then you got all your knowledge as to the relative rights of Laizure and Slemmons in Laizure's shop, and from Laizure's friends, without knowing anything about what Mr. Slemmons may have been doing, or even questioning him about it; is this true?

(Objected to, the witness having already testified that the general impression of the community was that Laizure invented the plough, and that he cannot remember particulars of events that occurred so long ago.)

Ans. I got it principally at his shop, but it was talked about at other places also. I don't recollect of talking to Slemmons about it, and only recollect of being in his shop once about that time. My business did not call me that way.

427 Cross-ques. 21. Are your impressions and recollections of facts, as stated in this deposition, the result of your actual and personal knowledge and observation, or have you arrived at the said impressions and opinions mainly from what you have heard from others?

Ans. From personal observations and from others both.

Cross-ques. 22. As to facts that would determine Mr. Laizure to be the original inventor, and that Slemmons had little or no right to said invention, do you testify from your actual personal knowledge, or from opinions you have formed from what you have heard?

Ans. My own observations determine my mind stronger than what I heard, but I also heard what others said.

Cross-ques. 23. Did you ever observe anything to enable you to swear that Laizure actually had a better right to the invention in dispute than Slemmons?

(Objected to as not in cross-examination, the witness not having sworn or pretended to swear that Laizure had a better right than Slemmons, but has only given his opinion, founded on the facts and the conversations that he knew and heard.)

Ans. From having seen Laizure working at it, and hearsay outside, is the only way I judge.

Redirect examination:

Ques. 24. In your cross-examination you say that you are unwilling to swear "point blank" that you ever heard one or any number of persons say that Laizure, and not Slemmons, was the inventor of the plough in question; you are ready to swear point blank that you have heard persons make that statement, and that you are satisfied that it was the truth, and that it was the impression among the people here, so far as you were acquainted with them, that it was the truth, and that you are only unwilling to swear point blank as to any particular number of persons at this late day?

(Objected to as leading.)

Ans. That is it.

428 Recross examination:

Cross-ques. 25. Were you acquainted with the majority of the citizens of Cadiz at that time?

Ans. Yes, sir.

Cross-ques. 26. And do you now recollect that a great many of these citizens expressed their opinions in favor of Laizure against Slemmons?

Ques. 8. Would you now swear that you heard ten people say that Laizure, and not Slemmons, was the inventor of the plough in dispute?

Ans. I would not specify any number.

Ques. 9. Would you take your oath on five?

Ans. That draws it down, and you might draw it down to one, and still I can specify no number. I only know I have heard some people talk about the matter.

Ques. 10. In talking about it, will you at this time positively swear that they said, in effect, that Laizure was the inventor of the plough; that Slemmons was not, and that Slemmons wrongfully appropriated and secured the invention to himself?

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Ans. No. He made the first one that I ever saw.

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Ans. No, sir; I don't.

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Ans. About that time I have, or shortly afterward.

Ques. 16. What did he say?

Ans. That he was the original planner of the plough.

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426 Ans. I could not tell just the conversation; but that is my opinion. I got that impression.

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Ans. I recollect of having conversations with Laizure; I was opposed to Slemmons getting the patent from what I knew.

Ques. 19. What did you actually know that you should be opposed to Slemmons?

Ans. From observations in working in the shop.

Ques. 20. You have already sworn that you did not know that Slemmons did not make the first iron double shovel plough; if you were ignorant upon that point, how do you know that Laizure had any rights whatever to the invention?

(Objected to, the witness having sworn only as to his belief, and to the best of his knowledge and information.)

Ans. They had a controversy, and I was there and saw Laizure tinkering and working at it to get it right, and thought he was the inventor, and not Slemmons.

Ques. 21. Did you visit Mr. Slemmons at this time to ascertain about the invention, or did you question him about it?

Ans. No, sir; I did not.

Cross-ques. 22. Then you got all your knowledge as to the relative rights of Laizure and Slemmons in Laizure's shop, and from Laizure's friends, without knowing anything about what Mr. Slemmons may have been doing, or even questioning him about it; is this true?

(Objected to, the witness having already testified that the general impression of the community was that Laizure invented the plough, and that he cannot remember particulars of events that occurred so long ago.)

Ans. I got it principally at his shop, but it was talked about at other places also. I don't recollect of talking to Slemmons about it, and only recollect of being in his shop once about that time. My business did not call me that way.

427 Cross-ques. 21. Are your impressions and recollections of facts, as stated in this deposition, the result of your actual and personal knowledge and observation, or have you arrived at the said impressions and opinions mainly from what you have heard from others?

Ans. From personal observations and from others both.

Cross-ques. 22. As to facts that would determine Mr. Laizure to be the original inventor, and that Slemmons had little or no right to said invention, do you testify from your actual personal knowledge, or from opinions you have formed from what you have heard?

Ans. My own observations determine my mind stronger than what I heard, but I also heard what others said.

Cross-ques. 23. Did you ever observe anything to enable you to swear that Laizure actually had a better right to the invention in dispute than Slemmons?

(Objected to as not in cross-examination, the witness not having sworn or pretended to swear that Laizure had a better right than Slemmons, but has only given his opinion, founded on the facts and the conversations that he knew and heard.)

Ans. From having seen Laizure working at it, and hearsay outside, is the only way I judge.

Redirect examination:

Ques. 24. In your cross-examination you say that you are unwilling to swear "point blank" that you ever heard one or any number of persons say that Laizure, and not Slemmons, was the inventor of the plough in question; you are ready to swear point blank that you have heard persons make that statement, and that you are satisfied that it was the truth, and that it was the impression among the people here, so far as you were acquainted with them, that it was the truth, and that you are only unwilling to swear point blank as to any particular number of persons at this late day?

(Objected to as leading.)

Ans. That is it.

428 Recross examination:

Cross-ques. 25. Were you acquainted with the majority of the citizens of Cadiz at that time?

Ans. Yes, sir.

Cross-ques. 26. And do you now recollect that a great many of these citizens expressed their opinions in favor of Laizure against Slemmons?

Ans. That is my opinion about it. I suppose there were some Slemmons men, but I don't remember what they said.

Cross-ques. 27. I am not asking you for your opinion; I ask you for that which you recollect and will positively swear to. Now please answer the previous question.

(Objected to, the witness having already declined to swear positively to particulars that happened so long ago.)

Ans. I recollect that the citizens expressed themselves in favor of Laizure against Slemmons.

Cross-ques. 28. Was this done by a few or a great many?

(Same objection as above.)

Ans. I could not say that.

Cross ques. 29. Then how can you swear so positively that the impression was general?

Ans. There was not much machinery made here at that time, and there was talk about this.

WM. CADY.

Testimony of Lewis Ryan.

Also, LEWIS RYAN, of Harrison County, Ohio, of lawful age, being by me first duly sworn, as hereinafter certified, deposes as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is Lewis Ryan; age, as I understand it, about 56 or 57; residence, Harrison County, Ohio; and occupation, farming. I followed blacksmithing from 1844 to 1859.

Ques. 2. I now show you a wooden plough, marked Respond-
429 ent's Exhibit, Wooden Plough, No. 1, and ask you how long ago you can swear positively that you saw ploughs made in every essential particular like this one.

Ans. I saw such ploughs, or ploughs made in the same way, between thirty-five and thirty-eight years ago, and have seen them ever since.

Ques. 3. Are you positive that you saw that kind of a plough as early as 1845?

Ans. Yes, I am; have sharpened their shovel.

Ques. 4. When did you first see an iron plough, made in the same way, except that the iron beams were curved to form the standard for the shovels; that is, a plough like complainant's exhibit, original model?

Ans. With the iron handle like the model; it must have been some time in 1853 or 1854. I recollect of seeing one made by Laizure and one made by Slemmons.

Ques. 5. When did you first see a plough like exhibit, original model, with wooden handles instead of iron?

Ans. The first one I ever saw I made in 1852, some time in May or June, which was like the one I now offer in evidence and mark Respondent's Exhibit Ryan Plough, which plough I also made myself some time between 1852 and 1855.

Ques. 6. Had you ever seen a plough similar to exhibit Ryan plough before you made the one referred to in your last answer?

Ans. No. That is the first one I ever saw.

Ques. 7. Where did you get your idea of such an iron plough?

Ans. The curve of the beam I got from a Hall & Spear furrow plough, which I was selling, and the balance from the wooden plough.

Ques. 8. Did you ever hear that Matthew Slemmons had made an application to the Patent Office for a patent on a plough like this?

Ans. I did.

Ques. 9. What did you do when you heard it?

Ans. I wrote to the Patent Office to see.

Ques. 10. How did you sign your communication to the Patent, Office?

430 Ans. "Well Wisher," Means P. O., Harrison County, Ohio.

Ques. 11. Do you remember whether Slemmons had already made application, or only that he was going to?

Ans. From the correspondence I got back, I think he had not made the application, but I had heard he was going to.

Ques. 12. What was the substance of the letter you wrote?

Ans. I stated that I understood there was a man in Ohio who had applied to the Patent Office for a patent on a double shovel iron plough, and stated that I did not consider it an invention; it was a change of material from wood to iron, and that I had been making them for over two years myself, pretty near three, and he had been peddling them himself over the county for more than two years. That is about the sum and substance of what I wrote and said to answer "Well Wisher," Means P. O., Harrison County, Ohio.

Ques. 13. What was the substance of the reply you received?

Ans. He told me to let the office know the man's name referred to in the letter, which I did, as Matthew G. Slemmons.

Ques. 14. Were you satisfied that Matthew G. Slemmons was not entitled to a patent, and was not the original inventor?

Ans. I was satisfied that he was not entitled to a patent, after I got the patent law. I claim it was not an invention; only a change from wood to iron.

Ques. 15. Did you believe him to be the first maker of that plough?

Ans. No. I think I made them before or about the same time; also, I think Mr. Laizure did; at least, I know what I did; we all made them about the same time. I don't know just which one was first. I made mine in 1852.

Ques. 16. Did you ever see, or hear, or know of Mr. Slemmons making this kind of a plough, or intending to make one, before you made yours?

(Objected to as leading.)

431 Ans. No. I had made the plough; the first I knew, he sent me word to quit making them.

Ques. 17. When was it he sent you word?

Ans. Between '53 and '55; I don't remember the date; I then wrote to the Patent Office.

Ques. 18. If you was satisfied that Slemmons was not entitled to a patent, why did you not interfere to prevent his getting one?

(Objected to as immaterial and irrelevant.)

Ans. I thought I did.

Ques. 19. I mean in 1860.

Ans. I was out of the business, or I should.

Ques. 20. Did you know that a second effort was being made in 1860?

Ans. Not until he came to me with a Scientific American, and told me he had a patent on it.

Ques. 21. When was that?

Ans. In 1861 or 1862, I think.

Ques. 22. Did you stop making them when he sent you word to quit?

Ans. No, I did not; I made them more than ever.

Cross-examination:

Cross-ques. 23. When did you write your "Well Wisher" letter?

Ans. I can't tell the exact date; either in 1854 or 1855.

Cross-ques. 24. Did the Patent Office ever give you any information that Slemmons had made his application on this plough?

Ans. Nothing more than I stated before, to let the office know the name.

Cross ques. 25. And after you had complied with this request, did you ever hear from the office again on the case?

Ans. No; that was the first and last.

Cross-ques. 26. When did you make your first iron double shovel plough?

Ans. It was in May or June, I think, in 1852.

Cross ques. 27. What enables you to fix it positively in that year?

432 Ans. It was the year the Steubenville and Indiana Railroad was building, and I was doing the work on section 27, and my books show that it was in 1852.

Cross-ques. 28. Do I understand you to say that yourself, Laizure, and Slemmons all made the iron plows about the same time, and that you are not exactly positive as to who made the first one?

Ans. I think they made them about the same year I did, or thereabouts, but I am not positive who made the first one.

Cross ques. 29. What became of the plough you made in 1852?

Ans. I sold it.

Cross-ques. 30. Did you sell it that year, or in 1853?

Ans. I sold it that year.

Cross-ques. 31. To whom?

Ans. I can't tell; I made but two that year, but cannot tell who got them. It is my impression that Abraham Busby got one.

Cross-ques. 32. Did you make or sell more than the two ploughs mentioned, during 1852?

Ans. I don't think I did.

Cross-ques. 33. Did you keep any book that would show when you sold your first iron plough, or have you any written memoranda that will assist you in your memory upon this matter?

Ans. Nothing more than I stated before, about the book account I keep with the men who came to get work done for section 27 on the railroad.

Cross-ques. 34. In this account is there any mention made of a plough?

Ans. Not that I know of.

Cross-ques. 35. When did you finish your work in connection with the railroad, and what did you afterwards follow as a business?

Ans. I finished work for the railroad in 1854 or 1855, and after that I continued blacksmithing and making these ploughs until 1859.

Cross-ques. 36. Did you do nothing in your blacksmith shop in 1853?

433 Ans. Yes, sir; I was working all the time.

Cross-ques. 37. May it not be possible, then, that it was during this year that you made your first iron plough?

Ans. It might be possible, but I don't believe it was.

Cross ques. 38. Whenever it was, it was about the same time that Laizure and Slemmons made their first iron ploughs, was it not?

Ans. It is my impression it was about the same year.

Cross ques. 39. Did either Slemmons or Laizure, or any other body, to your knowledge, sell these iron double-shovel ploughs, before you made your first ones?

Ans. Not that I know of.

Cross ques. 40. Do you know, of your own knowledge, that Matthew G. Slemmons did not make the first plough of the description here in dispute?

Ans. I don't know anything about that.

Cross-ques. 41. Do you know the date of Matthew G. Slemmons' application for a patent on this plough?

Ans. I don't.

Cross-ques. 42. How do you know, then, that he sold them two years prior to this date; are you exactly certain about this?

Ans. I am certain he had been selling them for two years before he notified me to quit, and I wrote to the office.

Cross-ques. 43. Is this all you are certain about, relative to the two years' public use question?

Ans. I was selling them myself two years before he notified me.

Cross-ques. 44. In what year did he notify you?

Ans. In 1854 or 1855, can't tell which; seems to me it was the latter part of 1854.

Cross-ques. 45. Was this notice given before or after he had applied for a patent?

Ans. I believe it was before.

Cross-ques. 46. What leads you to believe so?

Ans. From writing to the Patent Office, and their wanting to know his name; if he had got out a patent, they would have known his name.

434 Cross-ques. 47. Did Slemmons notice to you give any information that he had taken steps to secure a patent?

Ans. It did.

LEWIS RYAN.

Testimony of John Campbell.

Also JOHN CAMPBELL, of Harrison County, Ohio, of lawful age, being by me first duly sworn, as hereinafter certified, deposes and says as follows:

Ques. 1. State your name, residence, age, and occuption.

Ans. My name is John Campbell; age, forty-four years; reside in Harrison County, Ohio, and by occupation a farmer.

Ques. 2. When and where did you first see an iron double shovel plough, like Exhibit Ryan Plough?

Ans. The first one was at Ryan's shop, about May or June, twenty-four years ago.

Ques. 3. How do you fix this date?

Ans. From the age of my eldest child.

Ques. 4. How so?

Ans. That is one way. I know that I saw the plough twenty-four years ago, because my son was born in July, 1852, and I saw it the spring before.

Ques. 5. How do you know that it was not the spring after your boy was born that you saw this plough?

Ans. From the fact that I moved away from the farm where my boy was born the spring afterward.

Ques. 6. Was there any difference between that plough and the exhibit?

Ans. No particular difference.

Ques. 7. Who owned it?

Ans. I think Abraham Busby—one of his boys had it; and, from conversation, I think he bought it of Squire Ryan.

Ques. 8. Do you know when Laizure and Slemmons commenced making these ploughs?

Ans. No, sir; I don't.

Ques. 9. How long ago can you swear that you saw in use ploughs similar to Exhibit Wooden Plough No. 1?

435 Ans. I am satisfied I saw them in use twenty-five years ago.

Cross-examination:

Cross-ques. 10. When you moved away, after the birth of your first child, how much further did you reside from Ryan's establishment than you did before?

Ans. About one mile and a half further.

Cross-ques. 11. Did you frequently go to Ryan's shop in the year 1853?

Ans. I was very seldom there.

Cross-ques. 12. But you were there, were you not, several times during that year?

Ans. I don't remember of being there more than once.

Cross-ques. 13. How far did you live from Ryan's shop before you moved away?

Ans. About three-quarters of a mile.

Cross-ques. 14. Were you in the habit of making frequent visits to Ryan's shop in 1852, before you moved?

Ans. No, sir; I was not.

Cross-ques. 15. How many times do you suppose you were at Ryan's shop in 1852 before you moved away?

Ans. Have no recollection of being there but the one time that I would swear to.

Cross-ques. 16. In what month did you make that visit?

Ans. I think the latter part of May, or first of June.

Cross-ques. 17. Do you remember what, if any, business you had there on that visit?

Ans. Yes, sir; I do. I went there to get a steel four-prong fork mended.

Cross-ques. 18. How long were you at the shop?

Ans. I can't exactly remember; not less than an hour.

Cross-ques. 19. Was it at this visit that you think you saw Ryan's double-shovel iron plough?

Ans. It was.

Cross-ques. 20. But you only fix the fact that it was at this visit that you saw said plough from the time when your child was born, one

436 or two months afterward. What special connection is there between these two occurrences that enables you to testify as you do?

Ans. From the fact that I did not live at the same place the next year. It was the year I took the fork there to get mended, and I never lived there afterward.

Cross-ques. 21. Is there any other special incident that you can now recollect that happened in 1852?

Ans. Nothing at all.

Cross-ques. 22. Did this visit at the blacksmith shop, and what you saw there, make much impression on your mind at the time?

Ans. Not a great deal.

Cross-ques. 23. Did you talk about what you saw there when you left?

Ans. I talked about the job I got done after I left.

Cross-ques. 24. Did you talk much about the plough you saw there?

Ans. I don't know that I did; but I did not forget it.

Cross-ques. 25. Was it on your mind so that you often thought of it?

Ans. I don't remember how often I thought of it; it was not on my mind much; did not bother me a great deal.

Cross-ques. 26. At any time during fifteen years thereafter, do you remember any conversation about that particular plough?

Ans. I don't remember any.

Cross ques. 27. Do you think you had any?

Ans. Yes, I believe Squire and I laughed about that plough within fifteen years after I saw it there.

Cross ques. 28. But you have no distinct recollection of such occurrence?

Ans. I have none.

Cross-ques. 29. What did you see at Ryan's shop in 1853?

Ans. Don't know that I saw anything in particular.

Cross-ques. 30. Are you sure you did not see Ryan's iron double-shovel plough at that visit?

Ans. I don't remember of seeing any.

437 Cross-ques. 31. If this plough you speak of made so little impression on you when you first saw it, and if, as you state, you neither had it on your mind nor had any conversation about it afterward, and if the only incident by which you fix your memory in this matter is the mere birth of a child a considerable time afterward, and if you can recollect no other incident that happened during that whole year, do you think that your memory is clear enough to justify you, twenty-four years afterward, in swearing positively that it was at your visit in 1852, and not in 1853, when you first saw the plough referred to? May not your memory deceive you?

Ans. Any man's memory is likely to deceive him; but I think that I am right.

Cross-ques. 32. Then will you swear point blank that it was in 1852 when you saw Ryan's iron plough?

(Objected to, the witness having already sworn clearly to that effect, and having given his reasons therefor.)

Ans. No; I won't swear point blank; but I feel satisfied that it was.

Cross-ques. 33. How came you here to testify in this case?

Ans. Ryan got at me to come, from the fact that he pumped round until he found out what I knew about this plough of his. He asked me if I had one of his make of ploughs; I told him I had; he asked me how old it was; I told him I could not tell; I told him I had got it second-handed; he asked me if I could remember how long it had been since I had seen one of his make of ploughs; I told him I thought it had been about twenty years; that I could tell exactly, or about exactly, if I was at home; he said, that will do; there were some men up at town that would likely send for me; I asked him what was up, and he could not actually tell me himself what was up.

Cross-ques. 34. Was not an effort made to fix the date at 1852 when you saw Ryan's plough? Was not that year spoken of, and did you not endeavor to recollect that it was in that year?

Ans. No, sir; there was no effort made, and nothing at all said about it.

438 Cross-ques. 35. Do you mean to say that no one spoke to you recently about 185? being the year when Ryan first made his iron plough?

Ans. Yes, sir; I mean to swear that.

Cross ques. 36. How came you then to change your mind, that it was twenty-four years ago instead of about twenty, as you first told Ryan, as the time when you first saw his plough?

Ans. From the fact that I went home and saw the age of my boy, and then knew that it was twenty-four years.

Cross-ques. 37. Was anything said about the age of your boy in your conversation with Ryan?

Ans. Yes.

Cross-ques. 38. What? State in substance.

Ans. Ryan asked me how I could tell if I was at home, and I said by the age of my boy, as it was the same year.

Cross-ques. 39. What month in 1853 was it that you made your visit to Ryan's shop?

Ans. Can't tell that exactly; think it was in March. I can tell nearer; it must have been in May, when I was grubbing.

Cross ques. 40. Then the visit in 1852 at Ryan's shop, the birth of your first child, and your visit in 1853 to Ryan's all occurred within the space of one year, or very nearly so, did they not?

Ans. Yes.

Re-examination:

Cross-ques. 41. What do you mean in answer to question 32 that you cannot swear point blank that you saw Ryan's plough in 1852, but that you are perfectly satisfied that you did see it in that year?

Ans. I will swear point blank that I did see the plough that Ryan said was his, like Exhibit Ryan Plough, and the one that Busby said he got of him in 1852. That answer was because I misunderstood the question.

Cross ques. 42. What was there in question 32 that misled you? What did you understand that you were asked to swear to point blank?

439 Ans. I did not like to swear that Ryan made the plough, because I did not see him, and that was the way I understood the question.

Cross-ques. 43. I now read to you question 32: "Then will you swear that it was in 1852 when you saw Ryan's iron plough?" Did you understand by that question that you were asked to swear that that was Ryan's iron plough that you saw?

Ans. That is the way I understood.

Cross-ques. 44. Will you now swear point blank that in the year 1852 you saw at Ryan's shop an iron plough similar to Exhibit Ryan Plough?

Ans. Yes, sir; I will.

Recross-examination:

Cross-ques. 45. Then you do not know that it was Ryan's plough that you saw, do you?

Ans. No; I did not know that it was; all I know is, that Ryan said he made it, and the man who had it said he bought it of Ryan.

Cross-ques. 46. Then, for all you know, except mere hearsay, that was spoken over twenty-four years ago, upon a matter in which you were not interested and thought little about, that plough at Ryan's shop might have been made by some one else and and taken there—Slemmons, for all you know?

Ans. All I know about it is just what they said.

JOHN CAMPBELL.

Testimony of Samuel Hamilton.

Also SAMUEL HAMILTON, of Cadiz, Ohio, of lawful age, being by me first duly sworn, as hereinafter certified, deposes as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is Samuel Hamilton; age, fifty-five years; residence, Cadiz, Ohio; and occupation grocer and farmer.

Ques. 2. How long have you lived in Cadiz?

Ans. Ever since I was born.

440 Ques. 3. Do you remember, between the years 1850 and 1855, that Mr. Laizure and Mr. Slemmons began making iron double-shovel ploughs?

(Objected to as leading.)

Ans. I believe they commenced in 1852 and 1853.

Ques. 4. Did you ever hear at that time who was the inventor and first discoverer of this plough?

Ans. My understanding was that Laizure made the first one, and then they both made them.

Ques. 5. How did you arrive at that understanding?

Ans. The only way was by being about their shop a good deal when they were working at them.

Ques. 6. Did you ever talk with them or with others about it?

Ans. I used to haul the ploughs out for them, and that brought me about the shop often. I talked with them when they first were getting them up; they talked about selling patents. I only heard others talking around the grocery about the ploughs.

Ques. 7. What was your impression as to who invented this plough?

(Objected to as immaterial.)

Ans. My understanding was that Laizure made the first plough, and then Slemmons made one and sent on for a patent, when Laizure wrote a letter and stopped him. After that I think they sent on both together and got the patent; went partners.

Ques. 8. Upon what did you base this impression?

(Same objection as above.)

Ans. From hearing them and others talking about it.

Ques. 9. Did you ever hear Laizure say anything about it; if so, what, as nearly as you can recollect?

Ans. I heard him talking about sending this letter on to stop the other from getting a patent. He claimed at that time that he had a right to it by making the first one.

Ques. 10. Did you ever hear Slemmons say anything about it; if so, what?

Ans. I heard him say he had as good a right to the plough as Laizure had.

441 Ques. 11. Did he ever allow that Laizure had any, or half the right, as nearly as you can recollect?

Ans. They neither allowed that in the first place, but afterward agreed to take it between them.

Ques. 12. You say that you talked about the matter, and heard others talking about it, among the blacksmiths and about the grocery; what was the general impression as to who was the real inventor of the plough?

Ans. Some thought it was Laizure and some the other; it was mixed. I believe the most of them thought Laizure made the first plough.

Ques. 13. What was your impression about the matter?

Ans. I did not know exactly who made the first plough. My impression was that Laizure made the first one.

Ques. 14. What made you think so?

Ans. By seeing him getting up the shape of it in his shop. I was not in Slemmons' shop to see him getting up the first one.

Ques. 15. Did you hear Slemmons getting up one at that time?

Ans. I heard of him getting up one pretty near the same time; maybe a little afterward; I don't recollect exactly.

Ques. 16. As nearly as you can recollect, was it afterward or before when you heard of Slemmons' getting up one?

Ans. My recollection is that it was afterward.

Cross-examination:

Cross-ques. 17. When did you begin to haul ploughs for Slemmons and Laizure, or either of them?

Ans. I think it was in 1854 or 1855. I bought a plough of Slemmons in 1854, and paid him in hauling.

Cross ques. 18. Had you hauled any ploughs for either of them before that?

Ans. I don't recollect whether I did or not.

Cross-ques. 19. When was it that you first saw a plough like the one in dispute?

442 Ans. It was, I think, in 1852 or 1853; I don't recollect distinctly.

Cross-ques. 20. How long after you first saw them were they begun to be sold?

Ans. I reckon it was two years.

Cross-ques. 21. Are you positive that it was not 1853 when you first saw one of these ploughs, instead of 1852?

Ans. I am not certain.

Cross-ques. 22. Were you intimately acquainted with both Laizure and Slemmons?

Ans. Yes, sir.

Cross-ques. 23. Which of them was the most apt to talk about their affairs to others?

Ans. I suppose Laizure was. Slemmons was a man who seldom said anything about his business to others.

Cross-ques. 24. Was Laizure in the habit of talking freely about his affairs?

Ans. No; I don't think he was very freely; sometimes he would.

Cross-ques. 25. Much more so, however, than Slemmons?

Ans. Slemmons said very little about his business; not so much as Laizure.

Cross-ques. 26. If Slemmons and Laizure had happened to strike upon the idea of this plough at the same time, who, in your opinion, do you think would be most likely to speak about it to others?

Ans. I should think Laizure would.

Cross-ques. 27. And would the public be likely to hear first as to what Laizure had done?

Ans. I suppose so.

Cross-ques. 28. Did you consider and believe Matthew G. Slemmons to be truthful and reliable, and what was his reputation in this respect, so far as you know, among those who knew him?

Ans. His reputation was good.

Cross-ques. 29. As good as Laizure's?

Ans. Yes, sir.

443 Cross-ques. 30. Were you acquainted with what Slemmons was doing or had done about the plough in question before you saw or heard anything of Laizure's connection therewith?

Ans. I don't recollect; could not say about that.

Cross-ques. 31. Then, for all the personal knowledge you have relative to what Slemmons did, you do not actually know, do you, but that Slemmons may have had this plough finished before Laizure commenced, Mr. Slemmons being a man reticent upon his affairs, as you have testified?

(Objected to as incompetent and irrelevant.)

Ans. He might have had; I don't know when he did commence.

Cross-ques. 32. Then you would not swear that Laizure made the first plough, would you?

(Same objection as above.)

Ans. He is the first one I knew; I could not swear he made the first, because I do not know when Slemmons made his.

Cross-ques. 33. Do you believe that Slemmons lied when he claimed to be the first inventor, as you have stated that he did?

(Same objection as above.)

Ans. I could not say that, for I believe that Slemmons is a truthful man.

Cross-ques. 34. Are you aware that when a man applies for a patent he has to make oath that he believes himself to be first and original inventor of the device which he seeks to patent?

(Same objection, and because it asks for expert's testimony.)

Ans. I believe he has to do that to get the patent.

Cross-ques. 35. Did you know that Slemmons applied for a patent on this plough?

(Objected to as above.)

Ans. Only from hearsay; I did not know myself.

Cross-ques. 36. Have you any reasonable doubt about it; do you believe that he did?

(Objected to as above.)

444 Ans. I suppose he did; that was the general impression. I believe he did.

Cross-ques. 37. Before he applied for this patent you have reason to believe that Slemmons, like so many others as you state, had heard that Laizure pretended to have invented said plough?

(Objected to as above.)

Ans. I could not say; I don't know.

Cross-ques. 32. Do you think that Mr. Slemmons would commit deliberate perjury in swearing that this plough was his own invention, if he had any doubt whatever that Laizure had invented it before him?

(Objected to as above.)

Ans. I do not think he would.

Cross-ques. 33. If Laizure had invented this plough first, and from his habit of speaking about his affairs so that many had heard of his pretended claims, do you not think it would be highly probable that Slemmons, a brother blacksmith, claiming the same invention for himself, would be apt to hear of Laizure's matters as early as any one?

(Objected to as above.)

Ans. I suppose he would.

Cross-ques. 34. Did you ever hear of Slemmons admitting that Laizure was an inventor in this plough?

(Objected to as above.)

Ans. I never did.

Cross-ques. 35. Do you know whether or not Slemmons and Laizure

made amicable settlement together about this plough before it was patented to Slemmons?

(Objected to as above.)

Ans. My understanding was that they agreed to take it out together. I do not know they made any amicable settlement, however.

Cross ques. 36. Do you mean to say that the patent was to issue jointly to Slemmons and Laizure as co-inventors?

(Objected to as above.)

Ans. That was my understanding.

Cross-ques. 37. I now show you a certified copy of Slemmon's
445 patent, and ask you to state whose name there appears in the drawings and specifications as the inventor of the plough there shown?

(Objected to as above.)

Ans. Matthew G. Slemmons.

Cross-ques. 38. Does Laizure's name anywhere appear?

(Objected to as above.)

Ans. I don't see it; it is in Mr. Slemmons' name altogether.

Cross-ques. 39. Does this not lead you to believe that Laizure agreed that the patent should issue solely to Slemmons, and nowise to himself?

(Objected to as above.)

Ans. It does.

Cross-ques. 40. If Laizure thought he was the original inventor of that plough, do you think him foolish enough to allow that patent to issue as it did, while he knew that Slemmons was falsely claiming it, and agree to abandon his claims and take a share in such a patent?

(Objected to as above.)

Ans. I think not.

Cross-ques. 41. Under all the circumstances, then, who do you think was the inventor of this plough, judging from the best evidence?

(Objected to as above.)

Ans. I believe Mr. Slemmons was, under the circumstances.

Cross-ques. 42. Have you any reason to doubt the circumstances?

(Objected to as above.)

Ans. I have not.

Cross-ques. 43. Do you know of any ploughs like the one here in controversy being made or sold before 1853?

(Objected to as above.)

Ans. I do not; '54 is as long back as I can remember.

Redirect examination:

Ques. 44. In answer to question 41, which reads as follows
446 (here counsel read question 41), you say you believe Mr. Slemmons was the inventor, under the circumstances. What circumstances do you refer to?

Ans. That was on the circumstances of him having the patent-right in his own name.

Ques. 45. Is that the only circumstance which caused you to change the opinion which you have held for twenty years?

(Objected to as not in redirect, but being in the nature of a cross-examination; also, that the testimony is clear and explicit on this matter.)

Ans. That, and that I always considered Mr. Slemmons an honest man, and thought he would not take that out if he had no right to it.

Ques. 46. Do you regard Mr. Laizure as a shrewd, sharp man—one likely to look after his own interests promptly?

(Objection above repeated.)

Ans. I suppose he is about like a common man. I would not consider him a very intelligent man; only ordinary.

Ques. 47. Suppose that after Mr. Laizure learned that Mr. Slemmons had applied for a patent on a plough which he (Mr. Laizure) thought he had invented, and that Mr. Laizure supposed that if he should also apply for a patent and that they should each get a separate patent for the same invention, and that he did not know that if he could get a patent by proving that he was the original inventor and not Slemmons, that Slemmons' patent would be void, but supposed that both patents would be equally good, and also supposed that it would be more expensive to prove these facts and get a separate patent than if he should make an agreement with Mr. Slemmons that any patent which should be issued to Mr. Slemmons should belong half to him and half to Mr. Slemmons, do you think that Mr. Laizure would be more likely to make this agreement with Mr. Slemmons, or to fight the thing out to secure a patent for himself, which patent he supposed would not be worth more than a half interest?

447 (Objected to as leading; as not in redirect, but rather as cross-examination; also as containing assumption of facts not set up or intimated in deponent's testimony; also as calling upon him for expert knowledge, which it has not been shown he professes to possess; also as setting up a hypothetical case, having no foundation in the records of this controversy.)

Ans. I suppose he would be most likely to make the agreement. I did not know they had an agreement, but supposed the patent was all.

Ques. 48. If you had known when you answered cross question 41 as you did that Mr. Slemmons had made an agreement with Mr. Laizure that any patent that should be issued to Mr. Slemmons should belong to both—a half interest to each, would you have answered that question as you did?

(Objected to as in cross-examination rather than in redirect, and as a manifest attempt to confuse the witness by defendants—their own witness—and to neutralize the effects of statements upon which he has positively sworn, after a clear understanding of facts already proved and set up in the record.

Counsel for respondents replies to all these objections that it is apparent from the record that the witness answered these questions under a misconception of the facts shown in the record, into which misconception counsel for complainant had led him by bringing to his knowledge only a part of the truth and of the facts shown in the record. On this ground he claims the right to have the witness' testimony.)

Ans. I would not, I believe.

Ques. 49. In question 42, which is, "Have you any reason to doubt the circumstances?" you answer, "I have not." Did you then know all the circumstances? If so, would you have answered as you did?

(Counsel for respondents here read the contract between Laizure and Slemmons.)

Ans. I would not have answered in that way if I had known about this article of agreement.

448 Ques. 50. From what you know of Slemmons, do you suppose that if he thought and believed that he was the first inventor of this plough, and had his application for his patent in the office, that by the mere statements or claims of Laizure and the fact that Laizure had written a letter of protest to the Patent Office he would be induced to make such an agreement to share his patent with Mr. Laizure?

(Same objection noted as to former question.)

Ans. I suppose not, from what I know of Mr. Slemmons.

Ques. 51. With all the circumstances now before you, do you still think that Mr. Slemmons was the inventor?

Ans. I suppose not, as he gave over to Laizure.

Ques. 52. Had you been aware of all the circumstances, would you have answered question 41 as you did?

(Same objection as before.)

Ans. No; I suppose I would not if I had known about the article.)

Ques. 53. Have you any reason, now that you have been made acquainted with all the circumstances of the case, some of which it seems you were not previously aware of, to change your testimony given in direct examination?

(Same objection as above.)

In answer to objection, counsel for respondents says that his questions are designed simply to correct the misapprehension of facts into which the witness was led by the cross-examination.)

Ans. No, sir.

Recross-examination:

Cross ques. 54. Are all the new circumstances on account of which you now think again, in effect, that Slemmons was not the inventor of the plough in dispute contained in the article of agreement or contract between Slemmons and Laizure referred to in your redirect examination?

(Objected to by respondent's attorney as irrelevant.)

Ans. I think they are.

449 Cross ques. 55. There is nothing, then, outside of that agreement that has caused you to change your testimony as given in your cross-examination in question and answer 41?

(Objected to as above.)

Ans. Nothing else.

Cross-ques. 56. I believe you do not fully understand the purport of that agreement; I therefore hand you the copy of said agreement in exhibit, and request that you critically examine it for yourself, and answer me the following questions:

What, if anything, in said agreement, do you find that shows that Laizure was opposing Slemmons' efforts to obtain a patent on this plough, or that he was threatening to make trouble for Slemmons in the matter?

(Question objected to as designed to mislead the witness, there being nothing in evidence to show that Mr. Laizure threatened to make trouble for Slemmons, but simply to secure his own rights, as he thought he was the original inventor.)

(Counsel for complainants in reply would refer to question 50 put by counsel for defendant.

Counsel for respondents in reply says that there it nothing in question 50 that Laizure made any threats.)

Ans. I don't find anything in the agreement that shows anything of that kind—only that they were partners.

Cross ques. 57. Do you find, anywhere in said agreement, an admission that he is not the sole and original inventor?

(Counsel for respondent objects, the question being likely to confuse the witness. Here calls his attention to question 50, which he asks the notary to read.

Counsel for complainant respectfully proposes to conduct this exam-

ination on his own plan; he will introduce such matters as he sees fit; and if counsel for defendants deems said examination unfair or incomplete, his remedy lies in redirect examination. Protest is therefore made against any interruption in this cross-examination.

450 Counsel for respondent replies that counsel for complainants, as appears by the record, has already led the witness to make statements under a misapprehension of facts; he simply desires the witness shall fully understand the question, and again requests the examiner to read question 50.

Counsel for complainants, for no other reason than to remove any suspicion of unfairness, consents that the question shall be read, but denies any right in the defendants to compel this concession.

Counsel for respondents states that he does not for a moment suspect counsel for complainants of unfairness, his only apprehension being that the witness may not fully comprehend the question.

By agreement question 50 was here read.)

Ans. No; I do not find an admission of that kind.

Cross-ques. 58. Do you find in said agreement any admission or declaration to the effect that Laizure invented the plough at all?

(Objected to as immaterial and incompetent.)

Ans. No, sir; there is nothing of that in it; it appears that they both invented it, by that article.

Cross-ques. 59. Show me where there is any evidence in that agreement that shows that Laizure had anything to do with inventing that plough—quote the passage.

(Objected to as above.)

Ans. It does not show by the article that either was the inventor; it only shows that Laizure agreed to let Slemmons get the patent by giving him half.

Cross ques. 60. Do you repeat that this article shows in itself that Laizure permitted Slemmons to go on with his application and get his patent?

(Objected to as above.)

Ans. It looks a little that way—no, I don't know that it does.

Cross ques. 61. When you talk of permitting anything, does that not imply a power to forbid it?

(Objected to as above.)

Ans. I suppose it would.

451 Cross ques. 62. Do you find anything in that agreement that shows or intimates that Laizure ever intended to, or actually did, forbid Slemmons to apply for or obtain a patent on this plough?

(Objected to as above.)

Ans. I find nothing in the article of that kind.

Cross-ques. 63. Then, do you find anything, I repeat, that shows, in that article, that Laizure allowed or permitted Slemmons to get his patent?

(Objected to as above.)

Ans. I believe he did permit him to get.

Cross ques. 64. Does that article show or intimate that Laizure could prevent Slemmons getting a patent on this plough?

(Objected to as above.)

Ans. I suppose if he could permit him he might prevent him.

Cross ques. 65. I ask you to examine the agreement again, and I will repeat this question (question 64).

(Objected to as above.)

Ans. I don't know that there is.

Cross-ques. 66. Don't you know that there is n't ?
(Objected to as above.)
Ans. There is nothing in the article of that kind.
Cross ques. 67. Now I repeat again cross-question 63 and ask a definite answer.
(Objected to as above.)
Ans. There is nothing in the article that shows that Laizure permitted it.
Cross-ques. 68. Does not the article clearly show that Slemmons had made an application for a patent on this plough ?
(Objected to as above.)
Ans. Yes; the article does.
Cross-ques. 69. Do you repeat your answer that you believe Slemmons to be honest and truthful ?
(Objected to as above.)
Ans. Yes; I believe him to be so.
452 Cross ques. 70. And that he did not lie when he claimed and swore that he was the original inventor of this plough ?
(Objected to as above.)
Ans. I don't think he would lie about it.
Cross ques. 71. Do you think if Slemmons discovered he had made a false oath he would permit it to remain without correcting or withdrawing it ?
(Objected to as above.)
Ans. No; I don't think he would.
Cross ques. 72. Does this agreement between Laizure and Slemmons indicate that Slemmons made any change in his application for a patent ?
Ans. No; it don't show it.
Cross-ques. 73. Have you not examined a certified copy of the patent granted to Slemmons on this plough, and do you not find it issued to Mathew G. Slemmons alone, without a mention anywhere of Laizure's name ?
(Objected to as above)
Ans. Yes, sir; I examined it, and Laizure's name is not on it.
Cross-ques. 74. Do you find or believe that that is the patent referred to in this article between Laizure and Slemmons ?
(Objected to as above.)
Ans. Yes, sir; I suppose it is.
Cross ques. 75. You believe Laizure to be an honest man ?
(Objected to as above.
Ans. Yes; I suppose he is; never knew him to be dishonest.
Cross-ques. 76. Doesn't this article between Laizure and Slemmons indicate that both were aware that Slemmons had made an application for a patent for this plough in his own name ?
(Objected to as above.)
Ans. Yes, sir.
Cross-ques. 77. Now, if these two honest men knew that Slemmons was not the sole and original inventor of this plough, do you be-
453 lieve they would have permitted Slemmons' oath to remain as it did without any amendment ?
Ans. No; I think not.
Cross-ques. 78. Then do you not believe that this implies a mutual admission, between Slemmons and Laizure, that Slemmons was the original and first inventor of the plough in dispute ?
(Objected to as above.)
Ans. I suppose the agreement does.

Cross-ques. 79. It has been shown and admitted by you that this agreement shows no threat or duress on the part of Laizure; that it contains no admission that Slemmons was not the sole and original inventor; that it contains nothing to show that Laizure had any part in the invention; but that it does show that Slemmons and Laizure, honest men as you state, permit Slemmons to take out the patent in his own name alone. Is this true as you believe?

(Objected to as above.)

Ans. I believe it is.

Cross ques. 80. Now, who do you believe was the prior inventor of this plough?

(Objected to as above.)

Ans. That I could not say, which was the prior inventor.

Cross-ques. 81. Does it not clearly appear, from all the evidence, this contract included, that Laizure knew that Slemmons had applied for a patent on this plough?

(Objected to as above.)

Ans. Yes, sir; it does.

Cross ques. 82. Is it not shown also that Laizure contracted with Slemmons for a half interest in the patent, when it should be granted, and that he afterward made no opposition to Slemmons' movements?

(Objected to as above.)

Ans. Yes, sir; I believe it does.

Cross-ques. 83. Would Laizure, as an honest man, or as a man of common sense, as you state him to be, cast away any rights in this invention, if he had them, and accept in lieu thereof an interest in a
454 patent that he believed to be obtained through perjury, as would certainly be the case, if he did not know Slemmons' oath in his application to be true?

(Objected to as above.)

Ans. I don't suppose he would.

Cross-ques. 84. Now, as this agreement, which at first misled you, is now clear to you as to its showing that Laizure did accept an interest in Slemmons' patent, if obtained, and as it shows that Slemmons went ahead without any change of parties to his application, who, in your opinion, judging from the best evidence, and not from your impressions for many years back, do you now believe to be the original and first inventor of the plough in dispute?

(Objected to as containing an assumption of facts not in the record and as hypothetical.)

(Question withdrawn.)

Cross-ques. 85. Judging now from the best evidence, and not from your previous impressions, who do you believe was the inventor of the plough in dispute?

(Objected to as above.)

Ans. That is a question I believe I cannot answer. I cannot tell who it was.

Cross-ques. 86 Do you believe that this contract referred to would have been drawn between Slemmons and Laizure as honest men, if Slemmons had not been the original inventor?

(Objected to as above.)

Ans. I suppose not.

Cross-ques. 87. You know it was drawn; now who do you suppose or believe was the original inventor of this plough?

(Objected to as above.)

Ans. I suppose Slemmons was according to the contract.

(Signed) SAMUEL HAMILTON.

Adjourned by agreement until 8 a. m., August 26th, 1876.

D. A. HOLLINGSWORTH,
Notary Public.

455 *Testimony of Tunis N. Hilligas.*

AUGUST 26TH, 1876—8 a. m.

Parties present, and examination resumed.

Also TUNIS N. HILLIGAS, of lawful age, being first duly sworn, deposes as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. Tunis N. Hilligas; age, sixty eight; Cadiz, Ohio; carpenter.

Ques. 2. How long have you lived in Cadiz?

Ans. Since 1815.

Ques. 3. About the year 1850 and after, how were you engaged, and what opportunity had you of knowing Mr. Laizure and Slemmons?

Ans. I was frequently at their shops; sometimes went to get work done at Slemmons' shop, and other times just called in.

Ques. 4. Did you hear either of them say anything about a new iron double shovel plough?

Ans. Yes; I have heard Mr. Laizure speaking of it frequently, and afterward heard Mr. Slemmons.

Ques. 5. In what year, as near as you can tell, was this?

Ans. Cannot positively tell. It was before the patent was applied for, I heard Slemmons say he would get up the model first, if he could, and get a patent.

Ques. 6. Did you ever hear Laizure claim that he was the first discoverer or inventor of this iron plough? If so, tell what you know about that.

Ans. I heard him claiming that, after Slemmons made his application. He said he was the original inventor, and he would prevent Slemmons from getting a patent. I understood from Laizure that he got his idea of a double shovel from the wooden plough, and just thought he could get up an iron one from it.

Ques. 7. Did Slemmons make any ploughs before he made his model?

Ans. None, that I ever saw.

456 Ques. 8. Which, so far as you know, first conceived the idea of making such an iron plough, judging by their work and their actions in the matter?

(Objected to as incompetent.)

Ans. So far as that is concerned, I don't know that I can answer it. Mr. Laizure was the first one that I heard talking of it. So far as the work and action was concerned Mr. Slemmons was ahead, as he got up his model first.

Ques. 9. What, if anything, did you hear Mr. Slemmons say about this plough patent?

Ans. I heard him say he would try and get his model up first, and get a patent. He thought if he got his model on first, he would be entitled to the patent. He talked in this way several different times.

Ques. 11. What, if you remember, did he say on this subject?

Ans. He had been talking of Mr. Laizure getting up an iron plough from the wooden one, and said that he thought he could get one up as

well as Laizure, and thought if he got it up first, he would be entitled to a patent on it

Ques. 12. What did you hear Mr. Slemmons say on the subject of this invention?

Ans. I heard him say that Mr. Laizure had talked of getting up the iron plough first. I heard him say that he would get up his model first, if he could, and get it in first, and get a patent; said if he could get his model in first, he would be entitled to a patent without regard to who first thought of the invention.

Ques. 13. What did Mr. Laizure do in the matter?

Ans. I don't know exactly; he talked as though he would prevent Slemmons from getting a patent; said Slemmons was not entitled to it, as he had got up the invention first.

Ques. 14. Did he say that Slemmons got the idea from him?

Ans. He said he was the originator, and that he and Slemmons had been talking about it, but I cannot give the exact language.

Ques. 15. What was the general impression among the people
457 about here with whom you talked and heard talking of the matter as to who was the first to conceive the idea of making these ploughs?

(Objected to as incompetent.)

Ans. It was conceded that Laizure was.

Ques. 16. How did they look upon Slemmons' action?

Ans. Folks thought he had been a little too smart, for Laizure had beat him.

Ques. 17. What sort of a man was Laizure?

Ans. Folks thought he was as sharp as men generally in business and mechanical transactions.

Ques. 18. How was the matter of the patent settled, as you understood?

Ans. I understood they compromised the matter, and Laizure agreed to let him take out the patent and go "halves" with him in it.

Ques. 19. From what you know of Laizure, do you think he would be more likely to make such an agreement, even if he knew he was the original inventor, after Slemmons had got his application in the Patent Office, and if he thought that if the patent were issued to Slemmons the Patent Office could not revoke it, even if he should prove to the satisfaction of the Commissioner of Patents that he himself was the original inventor and should get a separate patent of his own, but that he and Slemmons would then each have a patent for the same thing, or to go on and get out a separate patent for himself?

(Objected to as ambiguous, as an assumption of facts not proven, and as immaterial.)

Ans. I could not answer that question; I can only judge what a man would do from actions.

Ques. 20. Do you know that Laizure did make this agreement?

Ans. I heard Slemmons say they had made that agreement in writing.

Cross-examination:

Cross-ques. 21. What was the date of Slemmons' application for the patent here in controversy?

Ans. I could not answer that question.

Cross-ques. 22. Can you tell what year?

458 Ans. I could not.

Cross-ques. 23. You have said in your direct examination that

you heard Slemmons and Laizure talking about this plough before the patent was applied for; do you wish to withdraw this statement?

(Objected to as incompetent.)

Ans. No, sir; I say that is a fact; therefore no necessity to withdraw.

Cross-ques. 24. How can you swear from your own personal knowledge that anything was done prior to Slemmons' application for a patent when you admit that you do not know even the year when said application was made?

Ans. I know you are a married man; I know your marriage was talked about before it took place; yet I would not undertake to swear to the year it did take place. I heard these men talking before the model was gotten up about this plough, and I saw the model of Mr. Slemmons' when making and after it was made, and then some time afterward he told me he had sent it off to the Patent Office.

Cross-ques. 25. How many years ago did all this conversation and the facts of which you have testified occur?

Ans. Perhaps over twenty years; can't tell exactly.

Cross ques. 26. Going back so long a time, will you swear positively that there may not be some things which you have forgotten or remember indistinctly? Do you consider your memory so infallible that you may not be mistaken in some particulars?

(Objected to as immaterial.)

Ans. No, sir, I would not do that; I would not pretend to give exact occurrences; still there are certain things that I am positive of.

Cross ques. 27. At this late date, may not your recollection be uncertain as to your knowledge of the facts of which you have testified being personal or hearsay?

(Objected to as above.)

Ans. A portion of it is hearsay and a portion is personal.

459 Cross ques. 28. Who was the most in the habit of talking about his affairs to others, Laizure or Slemmons?

Ans. Mr. Laizure.

Cross ques. 29. Were you intimately acquainted with both parties?

Ans. Yes, sir.

Cross-ques. 30. Was Mr. Slemmons communicative or reticent in regard to his private affairs?

(Objected to as immaterial.)

Ans. He was a good deal more reticent than Mr. Laizure.

Cross-ques. 31. Supposing that Laizure and Slemmons had made this invention at the same time, from whom would the public be the most likely to hear of it first?

(Objected to as above.)

Ans. I think Mr. Laizure; if he got a new idea he liked to brag over it.

Cross-ques. 32. Knowing Mr. Slemmons as well as you did, what do you consider to be his character for truth, honor, and reliability, and in this respect, what was his reputation, so far as you know, with those who knew him?

(Objected to as above.)

Ans. His reputation was as good as any person that I knew of; never knew anything to the contrary.

Cross-ques. 33. What was the reputation of Mr. Laizure for truth and reliability?

(Objected to as above.)

Ans. It was good; they both stood as fair as anybody that I knew at that time.

Cross ques. 34. Can you believe that Matthew Slemmons would deliberately lie?

(Objected to as incompetent, and as not in cross-examination, and irrelevant.)

Ans. I never thought so.

Cross-ques. 35. Do you believe that Laizure would have been a party to any transaction of a dishonest or untruthful character?

(Objected to as above.)

460 Ans. I think not, so far as I have ability to judge, at that time.

Cross ques. 36. If Matthew G. Slemmons knew that Laizure or any one else had invented this plough before he did, do you believe that he would perjure himself by making deliberate oath that he believed himself to be the sole and original inventor of it?

(Objected to as above.)

Ans. I don't think that he would.

Cross-ques. 37. If you knew of Matthew G. Slemmons making such an oath, would you believe him?

(Objected to as above.)

Ans. I think I should.

Cross ques. 38. I now show you a certified copy from the files of the Patent Office, of the file wrapper and contents in the matter of Matthew G. Slemmons' original patent, and I call your attention to the oath he makes in his application. Do you not find that Matthew G. Slemmons makes his solemn oath that he verily believes himself to be the original and first inventor of the improvements on the double-shovel plough, and that he does not know or believe the same was ever before known or used?

(Objected to as above.)

Ans. It appears so from the papers.

Cross ques. 39. Referring to the same certified copy, I call your attention to the letter of E. Laizure, dated January 15, 1854, and addressed to the Commissioner of Patents. Do you find that to be in substance a claim of Laizure that he was the discoverer of the plough in question, and first suggested it to Mr. Slemmons, and that on that account he objects to the patent issuing to Slemmons, and wants to know what steps are necessary to prevent such patent issuing?

Ans. Yes, sir.

Cross ques. 40. Referring to the same exhibit, I now call your attention to another letter written by Laizure, and addressed to the Commissioner of Patents, after he had written the letter just referred to. Do you find in said letter of Laizure that he and Mr. Slemmons have

461 made amicable settlement regarding the patent for the iron double shovel plough, and that Laizure does not intend setting up any further claim for a patent on the same?

(Objected to as above.)

Ans. Yes, sir.

Cross-ques. 41. I now call your attention to a certified copy of the original patent granted to Matthew G. Slemmons, and ask you to state whose name appears as inventor therein.

(Objected to as above.)

Ans. Matthew G. Slemmons.

Cross-ques. 42. Does Laizure's name appear?

(Objected to as above.)

Ans. It does not.

Cross-ques. 43. I call your attention to the copy of the agreement be-

tween Slemmons and Laizure. Do you find anything therein that shows Slemmons not to have been the original inventor of this plough?

(Objected to as above.)

Ans. I don't see that there is.

Cross-ques. 44. Do you find anything in this contract that shows Laizure to be the inventor?

(Objected to as above.)

Ans. I don't see anything that shows he is the inventor.

Cross-ques. 45. Does not the article clearly show that Slemmons had already made his application for a patent upon this plough, and that Laizure was perfectly aware of it?

(Objected to as above.)

Ans. It looks so to me; I can see it in no other light from reading the agreement.

Cross-ques. 46. Can you testify that Matthew G. Slemmons did not have this invention completed in his mind, even though Laizure might have made the first plough?

(Objected to as incompetent, the witness not being able to testify to the thoughts, except as they are shown by acts and words.)

Ans. I could not answer that question.

462 Cross ques. 47. Judging Slemmons from all you know of him, do you believe that if he discovered that he had made a false oath he would permit it to remain without change or withdrawal?

(Objected to as above.)

Ans. I don't think he would.

Cross-ques. 48. You have seen and admitted that Matthew Slemmons took out a patent on the plough in question, and swore that he was the original inventor, etc.; also, that Laizure, after he knew that Slemmons had made this application, made amicable arrangements with Mr. Slemmons, and wrote to the Patent Office withdrawing his claims and opposition; you believe them both to be honest men and men of good sense; now, in the light of this evidence, which you know to be true, I ask that you dismiss from your mind all impressions or beliefs that have not a foundation based upon your personal knowledge, and that you state who you now believe to have been the first and original inventor of the plough in dispute.

(Objected to with the previous questions, first, as not in cross-examination, the witness having testified in direct examination only to facts and beliefs formed twenty years ago; second, counsel for complainants having introduced new matter, and by long series of questions designed to mislead the witness by confining his attention to part only of the facts, thus leading him to make a series of admissions which, separately, are true, but which form a fallacious combination, and mislead the witness.)

Ans. I can reconcile it with the idea that both think they are right. Laizure made suggestions about making this plough in Slemmons' presence; Slemmons went to work and got up a plough, and sent it on to the Patent Office. Laizure claimed he was going to get up the double-shovel plough, and he had the best right to the patent, and they both might have differed in their construction materially. In this way I can reconcile it.

Cross ques. 49. Do you believe Slemmons' oath in the application for his patent, which you have read, is true or false?

(Objected to as immaterial.)

463 Ans. I believe it is true.

Cross-ques. 50. Judging Elijah Laizure from your intimate ac-

quaintance with him, do you think he would voluntarily abandon his right to anything upon which he considered that he had rightful claim and yield in favor of a man whom he thought had beaten him, or was about to deprive him of that which he considered to be his own?

(Objected to as immaterial, and as a hypothetical and entirely abstract question, and entirely irrelevant to this case unless the witness answered it in the light of the circumstance and as irrelevant.)

Ans. He has done that in one instance, I claim.

Cross-ques. 51. Do you believe Elijah Laizure would have entered into this written agreement with Slemmons, whereby he abandons all personal claim as an inventor, as shown by his communication to the Patent Office, of which you are aware, and not only allow Slemmons to obtain the patent in his own name, which he knew would be worthless if Slemmons' oath were false, and accept an interest in such a patent which he knew to be obtained through perjury—would Elijah Laizure, I ask, as an honorable and intelligent man, enter into such an agreement, in your opinion, unless he believed Slemmons to have been the first and original inventor of the plough in question?

(Objected to as immaterial and as containing an assumption of facts not shown in the record, Laizure having testified that he supposed if Slemmons got a patent on his application, it would be a good patent; secondly, that he does not abandon all claims as an inventor, and therefore the question is incompetent.)

Ans. I don't think he would.

Cross ques. 52. From that agreement and from other circumstances, of which you are now aware, do you consider that Laizure admitted that Slemmons had sworn to the truth in his application for a patent on this plough?

(Objected to as immaterial.)

Ans. I certainly do.

464 Cross-ques. 53. The question, as you know, has been who invented this plough, Laizure or Slemmons; in whose favor would you now decide?

(Objected to as immaterial and the direct testimony of the witness having been entirely upon facts that occurred and opinions formed twenty years ago.)

Ans. I should have to decide in favor of Slemmons.

Redirect examination:

Ques. 54. From what you know of Mr. Slemmons, do you believe that if he believed himself to be the first inventor of a plough, and his application in the Patent Office, do you believe that if you, who had no claims on the patent, should write to the Patent Office and claim that you were the inventor, that Mr. Slemmons, knowing that he was the inventor, and that you had no claims, would yield to you, and give you half of his invention for no other reasons than these?

(Objected to as an incomplete statement of a case, no mention being made of the fact that Slemmons was to be relieved of a portion of the expenses of obtaining a patent; also objected to as not in redirect, but as being in the nature of a cross examination by the defendants of their own witness.)

Ans. According to the question I would say yes, he would yield, but there are other considerations behind that question.

Ques. 55. Judging Mr. Laizure by the same standard, and supposing that he had invented a plough, but before he had made his application he heard that Mr. Slemmons had made an application for a plough of

the same description; that after he had written to the Patent Office he had an opportunity to make an arrangement with Mr. Slemmons by which Slemmons would agree to give him half of any patent he might get, would he or would he not be likely to accept such an arrangement?

Ans. I think he would have accepted.

Ques. 56. Do you believe that Mr. Laizure would deliberately swear to a falsehood?

Ans. I don't.

465 Ques. 57. I now call your attention to a part of Mr. Laizure's testimony in this case (counsel here read selected portions of the testimony herein of Elijah Laizure) and ask you if you believe Mr. Laizure to have told the truth in that testimony?

(Objected to for the reason that only a portion and a small proportion of Laizure's testimony was read; also, as incompetent, and objection is made to the witness being instructed as to the testimony of Laizure or other witnesses in this case, as the witness must testify from facts, as he may be able independently to do; moreover, it is not competent for a witness to testify in direct corroboration or rebuttal of a brother witness in the same case.

Counsel for respondents replies that he read the direct testimony of Mr. Laizure; that the witness is as well entitled to know that as the oaths and statements of Mr. Slemmons.)

Ans. I do.

Ques. 58. If, then, you believe Mr. Laizure's oath that he first suggested to Mr. Slemmons the idea of making the iron plough, that they both went to work making such ploughs, but that Mr. Slemmons got ahead of him in getting his application into the Patent Office, but afterwards agreed to give Mr. Laizure half of any patent he might get, do you believe Mr. Slemmons was the sole and only inventor, and that Mr. Laizure had no right in the patent at all?

(Objected to as not in redirect, but rather as in cross-examination; also as a misrepresentation of Laizure's testimony, who, in his cross-examination, repeatedly contradicts the statement that he was the first inventor, and declares the patent of Slemmons to have been rightfully issued, in view of all the facts attending the early history of the invention.)

Ans. I hardly know how to answer that. I stated when I started out that Laizure had suggested an idea about getting up an iron plough, but that Slemmons got up his plough first, and got it into the office.

466 Their ideas might have been very different as to how these ploughs would look when they were gotten up. I believe Slemmons was the sole originator of the plough he got up. Laizure had a right; he had a right to half, according to their agreement.

Ques. 59. Do you believe that Laizure suggested to Slemmons, as he swears, the idea of making these ploughs of iron?

(Objected to, as the witness is not acquainted with all of Laizure's testimony.)

Ans. I do.

Ques. 60. Do you believe that after that they both went to work to make them?

(Objected to, as immaterial, the question not calling for the witness' positive knowledge.)

Ans. Yes.

Recross examination:

Cross ques. 61. Do you retract your answer to the question where you

decided in favor of Slemmons, after you have carefully examined all of the facts that you have?

Ans. No, sir, I don't, and see no necessity for modifying it.

(Signed) TUNIS N. HILLIGAS.

Testimony of N. A. Hanna.

(By consent of parties, the examination of Mr. Hanna is taken down by Mr. Stern.)

Mr. N. A. HANNA, being first duly sworn, deposeth and saith as follows:

Ques. 1. State your name, age, residence, and occupation?

Ans. My name is N. A. Hanna; age, forty-nine; residence, Cadiz, Ohio; occupation, bookseller.

Ques. 2. When did you first come to Cadiz to live?

Ans. In the summer of 1852.

Ques. 3. When and where did you first see an iron double-shovel plough, similar to Complainants' Exhibit "Original Model"?

Ans. I believe I first saw it in New Athens, Ohio.

Ques. 4. When did you see such a plough in New Athens?

Ans. It was in the spring of 1852.

467 Ques. 5. How do you fix this date?

Ans. From the fact of seeing Mr. Alexander Wilson manufacturing these ploughs. I was occupying a room near his shop, and saw him working at them.

Ques. 6. Are you positive that you are correct in this date, or could you have been mistaken?

Ans. To the best of my belief, I am. I feel as positive of that as of any ordinary occurrence of my life. I feel very positive that I saw him making those ploughs in that season. I left the town that fall. I moved to New Athens in 1851, and from there to Cadiz in the fall of 1852. It must, therefore, have been at that time.

Cross examination:

Cross ques. 7. You say you are not positive whether you saw the first iron plough at New Athens, as this was a matter of no particular importance to you; and going more than twenty years back, may you not be in error one year; and will you positively swear that it was not in 1853 when you first saw the plough you speak of?

Ans. It was in 1852, when I lived in New Athens; I remember of seeing Wilson making them there.

Cross ques. 8. Did you ever see any one else making them?

Ans. Yes; I have frequently seen Laizure making them since.

Cross-ques. 9. Are you sure whether you first saw them being made at New Athens, or at Laizure's shop?

Ans. My belief is that it was at Athens, but I am not positive.

Cross ques. 10. Did the plough you first saw have two diverging beams, or but one straight one?

Ans. It was a double shovel plough.

Cross-ques. 11. Do you recollect whether the beam diverged from the clevis, or thereabout, or not?

Ans. I don't know whether they did or not.

Cross-ques. 12. May there not have been a single iron beam running back from the clevis, to which was attached the two shovel standards?

468 Ans. There may have been; but I don't think there was.

Cross ques. 13. Did you notice whether there was a continuous bar of iron from the clevis to the shovel, or whether there were two pieces bolted together somewhere between those points?

Ans. I did not notice anything definite; but I think it was a continuous bar.

Cross ques. 14. Are you positive on this point?

Ans. I am positive as to the impression; as much so as of anything I don't make a record of.

Cross-ques. 15. Have you ever been a farmer?

Ans. No, sir.

Cross ques. 16. Have you ever used a plough?

Ans. Not an agricultural one.

Cross-ques. 17. Have you ever given any attention or taken an interest in them, in a business occupation?

Ans. I have not.

Cross-ques. 18. Do you know whether the plough you saw at Athens was sold or not?

Ans. I know nothing about that.

Redirect examination:

Ques. 19. In cross question 7, you say it was in 1852 when I lived in New Athens: "I remember of seeing Wilson make them there." Do you mean that you saw him making them during that time?

Ans. Yes.

Ques. 20. In answer to cross-examination (cross-question 13), you say: "I did not notice the thing definite, but think it was a continuous bar." Do you mean a continuous and separate bar for each shovel?

Ans. I don't remember whether they united at the clevis or to a beam; I know there were two bars, one shorter than the other, and one on each shovel.

Ques. 21. Were they united when the plough was finished at the point where the draft was attached, either by welding them into one piece, or bolting them firmly together, or some other contrivance?

469 Ans. They were united by some contrivance, either at the point or by a short beam; I have no definite recollection which; would not swear positively.

Ques. 22. By a short beam; what do you mean?

Ans. A short piece of iron from six to twelve inches, and the points fastened to it; I mean the points of the beam.

Ques. 23. What would be the object of such a piece of iron, if such were used?

Ans. To hitch a team to, as I suppose.

Ques. 24. For what were these ploughs made? For sale or private use, so far as you know?

Ans. I suppose they were made for sale; he (Mr. Wilson) was manufacturing agricultural implements for sale.

Ques. 25. Have you any idea they were made for any other purpose than for sale?

(Objected to as immaterial.)

Ans. I have not.

Recross-examination:

Cross-ques. 26. Did you frequently visit Mr. Wilson's shop in 1852?

Ans. I did; our shops were close together.

Cross-ques. 27. Did you ever see one of those double-shovel ploughs fully completed in 1852?

Ans. It was in 1852 I saw Wilson's.

Cross-ques. 28. Do you know of Wilson selling any of those ploughs, or do you simply presume it?

Ans. I have no definite knowledge of my own, but presume he did, only from the fact that he manufactured such things for sale.

Cross-ques. 29. Did you hear the plough you refer to spoken of as a new thing, and as an experiment in ploughs?

Ans. I heard Mr. Wilson speaking of it as something good and new, that was calculated to take the place of wooden-shovel ploughs.

470 Cross ques. 30. Do you recollect of hearing in 1852 that a plough anything like this had been made in Cadiz, Ohio?

Ans. No, sir.

Cross-ques. 31. How many times in 1852 do you think you saw or examined Wilson's plough?

Ans. It would be impossible for me to answer that question; every day, perhaps, when he was working at them.

Cross ques. 32. Will you positively swear that the single beam running back from the clevis was not more than twelve inches long; may it not have been two feet?

Ans. I did not say there was any. If there was any, it was a very short one; I think not over twelve inches.

Cross-ques. 33. May it not have been two feet between the clevis and the point where the separate beams began to diverge?

(Objected to, the witness having already testified upon this point as fully as his memory will permit, and having stated that he does not know that there was any piece of iron connecting the ends of the beams to the clevis, or whether the clevis was attached directly to the beams; if there was any such connecting beam, it must have been very short.)

Ans. It could have been, but I have no idea whatever that it was.

Cross-ques. 34. Did you ever give critical examination to this feature of the ploughs, so as to fix it well in your memory?

Ans. No, I did not; nothing in detail upon any particular point.

Cross-ques. 35. This was twenty-four years ago, was it?

Ans. It was, about.

Cross-ques. 36. And you state that you have had no experience in the use of agricultural ploughs, do you?

Ans. I answered that. I have had no experience in agricultural ploughs.

Cross ques. 37. Have you ever given any attention to the construction of ploughs as a study?

Ans. No, sir; not as a study.

471 Cross ques. 38. Since 1852 have you thought much of the incidents at Athens connected with Wilson's ploughs?

Ans. No, I have had no occasion to.

(Signed) N. A. HANNA.

Testimony of Elijah Laizure.

Also ELIJAH LAIZURE, being further examined, testifies as follows:

Ques. 1. Are you aware that under the patent issued to Mat thew G. Slemmons no rights whatever are secured to you?

(Objected to as immaterial.)

Ans. I am aware that the Patent Office did not secure any to me, but he did.

Ques. 2. In answer to question 91, which is as follows: "From your knowledge of all the facts attending the early history of the invention

of the plough in question, do you believe Slemmons' patent to have been rightfully and properly granted and issued?" you answer: "I think it was a good patent and all right." Do you mean to say by that answer that Slemmons was the real inventor of the plough, and that the patent granting him the exclusive right in the invention was rightfully and properly granted; "a good patent and all right"? If not, what do you mean?

(Objected to as matter not proper on recall, but only admissible in deponent's previous redirect testimony.

Counsel for the respondents replies that the witness was recalled to explain an answer that it is apparent from the record that he did not mean; that counsel for respondents was certain that the question and answer would be taken in connection with the entire testimony of the witness, instead of referred to alone, there would be no necessity for an explanation. All he desires to get at is the meaning of the witness.)

Ans. I did not mean that Slemmons was the inventor; I meant that the patent was rightfully issued on the application made.

Ques. 3. Did you mean that according to the rules of the Patent
472 Office the patent was legally and properly granted, or did you mean that the patent, standing alone, without the contract, was a just disposition of your rights?

(Objected to as leading, and for reasons as above.)

Ans. I meant that it was granted by the Patent Office.

(Counsel for respondents objects to question and answer 91 on the grounds that the witness has not professed or shown himself to be an expert on the Patent Office rules and law, and, therefore, the question was incompetent and irrelevant.

Complainants' counsel at this stage of the proceedings respectfully declines to accede to the above objection; moreover the record clearly shows that Laizure knew the character of Slemmons' oath to his application referred to in said contract at the time the contract was made; also, that he, Laizure, clearly understood that a false oath rendered a patent voidable in law; that after all this had been abundantly proven, he was asked question 91, and testified as he did.

Counsel for respondent replies that he was temporarily absent from the room when question 91 was asked and answered; that he had overlooked the nature of the question until this afternoon, when it was read by counsel for complainants to one of the witnesses; that Laizure's testimony at the time had been closed, and that he knew no other way to remedy the mistake in which the witness had been led, except the one adopted.

Complainants' counsel fails to perceive how the above excuses the opposite party for neglecting a remedy he had in redirect examination, which followed the question 91. It is also alleged that the present instance is by no means the only part of Laizure's deposition where he either directly or in effect neutralizes his statement that Slemmons was not the prior inventor; and protest is here made against any further testimony from witness being given, of the above character, and an objection is here entered to all such testimony.)

Cross-examination:

Cross-ques. 4. I call your attention to the copy of your contract
473 with Slemmons, here in exhibit, and ask you whether it is an actual assignment by Slemmons to you, or is it a contract by Slemmons to assign an interest in his patent, after the same shall have been granted to Slemmons?

(Objected to as incompetent and irrelevant.)

Ans. It is a contract to assign.

Cross-ques. 5. Did you understand this when the article was drawn up?

Ans. Yes, sir; that is what I understood.

Cross ques. 6. And did you understand that Slemmons had to comply with said contract, and actually make to you an assignment before you had any legal rights under Slemmons' patent?

(Objected to for same reasons.)

Ans. I did not understand that he had to make an assignment, but I understand it now.

Cro s ques. 7. Although Slemmons never executed any assignment to you under the patent, did he comply with his contract in effect, as you understood it, by sharing with you one-half of the royalties paid during the original term of said patent?

Ans. Yes, sir.

ELIJAH LAIZURE.

Circuit court of the United States for the district of Kentucky. In equity.

W. W. LEGGETT ET ALS.
v.
B. F. AVERY ET AL.

Examination of witnesses on behalf of the respondents, under the sixty-seventh rule in equity, as amended, by agreement of counsel.

Present, Wm. Behrens for the complainants, and Wm. S. Bates for the defendants.

By request of parties, it is ordered that these depositions be taken by question and answer.

Testimony of James Ryburn.

JAMES RYBURN, a witness produced on behalf of the respond-
474 ents, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by W. S. Bat- s, esq., of counsel for respondents, as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. James Ryburn; fifty years; McLean County, Illinois; farmer.

Ques. 2. Are you acquainted with James and John Jamison, of Cadiz, Ohio?

Ans. Yes, sir.

Ques. 3. Do you or do you not remember selling Mr. Jamison a plough?

Ans. Yes, I do.

Ques. 4. How long ago was it?

Ans. The latter part of February or first part of March, 1853.

Ques. 5. How do you fix the date?

Ans. I left there about the 13th of March, 1853. Left there for good, and have not been back there but twice since.

Ques. 6. Can you describe the plough you sold to Mr. Jamison?

Ans. I don't believe I could; I know it was not an iron plough.

Ques. 7. Did you sell Mr. Jamison anything besides this plough at that time?

(Objected to as irrelevant.)

Ans. Yes; we, my brother and I, sold him a breaking plough and, I think, a harrow.

Ques. 8. Was either of these a double-shovel plough; and, if so, which one?

Ans. Yes, one; the first one spoken of.

Ques. 9. How long was this double shovel plough in your possession?

Ans. According to the best of my recollection, it was only one season; that is, from about the first of June until the time it was sold.

Ques. 10 From whom did you get this plough, if you remember?

Ans. From Isaac Ditmars, of Cadiz, Ohio.

475 Cross-examination:

Cross ques. 11. Can you positively swear that it was not later than March, 1853, when you sold that plough to Mr. Jamison?

Ans. Yes, sir.

Cross ques. 12. Was it not in 1854 that you left Ohio, or later?

Ans. No, sir.

Cross-ques. 13. Please describe accurately, or as near as you can, the double shovel plough you sold Mr. Jamison.

Ans. It was an ordinary wooden shovel plow.

Cross ques. 14. Were the beams constructed of iron or wood?

Ans. Of wood.

Cross ques. 15. Have you any recollection of how the other parts of the plow were constructed?

Ans. Two steel shovels of ordinary size.

Cross-ques. 16. Have you any recollection of how the beams were constructed?

Ans. No, I have not.

Cross-ques. 17. Are you certain that said plough did not come into your possession later than June, 1852?

Ans. Yes, I am.

Cross-ques. 18. Did you sell any other kind of ploughs than the ploughs before mentioned?

Ans. No others.

Redirect examination:

Ques. 19. Did you, or not, ever sell Mr. Jamison any other ploughs than the double shovel and breaking ploughs already mentioned?

Ans. No, sir; I did not.

(Signed) JAMES RYBURN.

Depositions of witness taken in an action pending in the United States circuit court for the district of Kentucky, wherein L. L. Leg-
476 gett et al. are complainants and B. F. Avery & Sons et al. are respondents, and for said respondents, at the time and place hereinafter mentioned.

Complainants and respondents both represented by counsel.

Testimony of James B. Jamison.

JAMES B. JAMISON, of lawful age, being by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, deposes as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. James B. Jamison; age, forty-six years; residence, Cadiz, Harrison County, Ohio; and by occupation am a farmer and sheep breeder.

Ques. 2. When and where did you first see an iron double-shovel plough, having iron beams diverging from the clevis, and bent downward to form standards for the shovels?

Ans. I am clear in my mind that I saw such ploughs in the year 1852. I bought one about the first of March, 1853, of James and Joseph Ryburn.

Ques. 3. Please describe this plough which you bought of James and Joseph Ryburn, in 1853.

Ans. It was an iron plough, with the front part of the beams welded or bolted together; the beams diverged from this point, and were bent down in the rear in a circle for standards to attach the shovels to.

Ques. 4. State all you know of its history.

Ans. I can't remember whether it was in the years '52 or '53 that the ploughs were manufactured here by Mr. Laizure and Mr. Slemmons. I remember of going to purchase the plough of Ryburn Bros. They were selling out here. I bought the plough, with other farming utensils, of them. I used it on my farm until it was worn out, and cannot now tell where it is.

Ques. 5. How many double-shovel ploughs did you buy of the Ryburn Bros.?

Ans. But one.

Ques. 6. Do you know by whom this one was made?

Ans. No, I don't.

477 Ques. 7. In what condition was it when you bought it; was it new, or had it the appearance of being used?

Ans. It had the appearance of having been used.

Ques. 8. How do you fix the date when you bought it?

Ans. The larger part of my grandfather's estate was given to John Jamison and myself, and the land was leased by our guardians; and the lease expired the spring of 1853, and we then took possession of the land. This was the spring we purchased this plough and other implements to go to work on the land with.

Cross-examination by WM. BEHRENS, Esq., representing M. D. Leggett & Co., solicitors for complainants:

Cross ques. 9. Can you positively swear that the double shovel ploughs referred to in your answer to question 2 were constructed with iron beams?

Ans. Yes, sir; iron-beam ploughs.

Cross ques. 10. Where did you see them?

Ans. I saw them at Mr. Laizure's and Mr. Slemmons', and also saw them being hauled around.

Cross ques. 11. Can you positively swear that you saw such ploughs as described in question 2 in the year 1852?

Ans. No; I would not be positive that I saw them before January 1, 1853, but my recollection is that they were about here in 1852.

Cross-ques. 12. Do you now recollect whether it was in February or in March, 1853, when you bought a double shovel plough from James and Joseph Ryburn?

Ans. I don't recollect certain; I know it was about the first of March; it might have been before or after.

Cross ques. 13. Did this plough have iron or wooden handles?

Ans. It had iron handles.

Cross-ques. 14. Are you positive as to that?

Ans. It was all out an iron plough.

Cross-ques. 15. Were the beams straight or not?

Ans. I have no recollection of seeing but the one kind of those ploughs except recently; the beams of the one I bought were straight
478 back to where the handles were fastened, and there they bent down to form standards for the shovels. I refer to the one I bought of James and Joseph Ryburn.

Cross-ques. 16. How were the beams fastened together?

Ans. I have no recollection whether they were welded or bolted.

Cross ques. 17. Was this the first plough of that character that you bought?

Ans. Yes, sir.

Cross ques. 18. Was not the double-shovel plough you bought from James and Joseph Ryburn constructed with wooden beams?

Ans. No, sir.

Cross-ques. 19. Can you swear positively that it was not constructed with wooden beams?

Ans. Yes, sir.

Cross ques. 20. What particular circumstance enables you to recollect the construction of the plough referred to so particularly?

Ans. One was that persons frequently looked at it in the field the next summer when we were using it; another is the conversation I had with the Ryburns when I bought it; that was the inducement to buy it. When I went to look at the farming utensils I bought of Ryburns I objected to the drag harrow, and James said there was the iron plough, and he wanted to sell all together.

Cross-ques. 22. Did either of the Ryburns speak of the beams of said plough, and extol the merits of it?

Ans. I have no distinct recollection of them saying anything about the iron beam.

Cross-ques. 23. What was your inducement in buying said ploughs from the Ryburns?

Ans. As I stated before, the Ryburns were going away, and brother and I were going to commence farming, and the Ryburns applied for us to buy their utensils, and among them was one of the iron ploughs. The Ryburns and us were intimate.

479 Cross ques. 24. Are you thoroughly familiar with the iron beam double-shovel plough as now made?

Ans. Yes, sir; as a farm implement.

Cross-ques. 25. How many ploughs of that character do you suppose you have seen in the last twenty years?

Ans. I have no idea; I have seen hundreds of them.

Cross ques. 26. How many ploughs of that character do you suppose you have seen in the last ten years?

Ans. One or two hundred, I should think.

Cross-ques. 27. And your familiarity with the iron-beam plough as now made refreshes your memory as to how that old one was made?

Ans. Yes, sir; certainly.

Cross-ques. 28. You had no particular interest in ploughs twenty years ago?

Ans. No; and I have not since; never dealt in them.

Cross-ques. 29. No particular reason why you should be impressed with the circumstance relating to a plough at that time any more than you would be impressed with other circumstances about the same time?

Ans. No, sir.

Cross-ques. 30. Who first asked you to testify in this case?

Ans. Mr. Stem, about three weeks since.

Cross-ques. 31. When, relative to this case, did you first state to any-

body that you bought a double-shovel plough in March, 1853, or about then?

Ans. I have no recollection of mentioning it for ten years, except to a Mr. Hanna, about three weeks ago.

Cross-ques. 32. What circumstances caused you to recollect it?

Ans. I saw Mr. Stem talking to a Mr. McCoy, and asked Mr. Hanna, who was present, who Mr. Stem was. Mr. Hanna said he was an attorney from Cincinnati, looking up how long it has been since this plough was manufactured. Hanna said he had seen them in 1852, in New Athens. I then told Hanna that I had purchased one from Ryburns in 1853.

480 Cross-ques. 33. Have you any books or memoranda in your possession by which you can fix the dates when you bought the double-shovel plough from Ryburns?

Ans. No, sir. Brother and I went in partnership in the spring of 1853, but we did not open our books until the first of April. The plough was purchased before then, and is entered in our books without a date.

Cross-ques. 34. Then you fix the time you bought said plough from memory alone?

Ans. Yes, sir; and from circumstances.

Cross-ques. 35. Do you know by whom this plough was manufactured?

Ans. No, sir; I do not.

Cross-ques. 36. Was the plough comparatively new when it came into your possession?

(Objected to as a mere reputation of what has already been answered, and an attempt to confuse the witness.)

Ans. Yes, sir.

Cross-ques. 37. You mean to say by that it had been used but little?

Ans. Yes, sir.

Cross-ques. 38. Did you ever do anything more with ploughs than to use them from time to time?

Ans. No, sir.

Cross-ques. 39. Have you any interest in the event of this suit?

Ans. Not at all, sir.

Re-examination by W. S. BATES, Esq., representing Hatch & Parkinson, solicitors for respondents:

Ques. 40. When you say a plough has been used but little, do you mean that it has been used but one month, six months, a year, two years, three years, or how long?

Ans. I mean one season's work, either fall or spring.

Recross-examination:

Cross-ques. 41. Do you know whether, from actual knowledge, the plough had been used before you bought it?

Ans. Not from actual knowledge.

481 Cross-ques. 42. You never saw it used before you bought it?

Ans. No, sir.

(Signed) JAS. B. JAMISON.

Examination of witnesses on behalf of respondent under the 67th rule in equity, as amended, pursuant to the annexed notice.

Present, Arthur Stem, representing Hatch & Parkinson, for the re-

spondent, and Wm. Behrens, representing M. D. Leggett & Co., for complainants. By request of parties, it is ordered that these depositions be taken by question and answer.

Testimony of John Miller.

JOHN MILLER, a witness produced on behalf of the respondents, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by ARTHUR STEM, esq., of counsel for the respondents, as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. John Miller; fifty-two; New Concord, Ohio; wagon-maker.

Ques. 2. Did you ever live in Cadiz, Ohio; if so, when did you move from that place?

Ans. Yes, sir; I moved from that place in the fall of 1853.

Ques. 3. What was your business at Cadiz?

Ans. Wagon-making.

Ques. 4. I now show you complainant's exhibit original model, and ask you if you ever saw a plough made like said model, having the curved iron beams diverging from the clevis and bent downward to form standards for the shovels; if so, when and where you first saw such a plough?

(Question objected to by complainants' counsel as leading.)

Ans. I have seen them. When I first seen them was at Laizure's shop in Cadiz, Ohio, in 1852; was when I first seen them as near as I can remember.

482 Ques. 5. Had you any business connected with Mr. Laizure?

Ans. Nothing more than that I used to make him woodwork for cultivators, and have made him wagons previous to that time.

Ques. 6. What effect had the introduction of their iron ploughs upon your business of making the woodwork for the cultivators.

(Objected to as immaterial and irrelevant.)

Ans. The iron ploughs took the place of the cultivators.

Ques. 7. Had your business in this respect decreased much when you left Cadiz in 1853?

(Objected to for the same reason.)

Ans. I don't recollect as to the much, but I did not get as many to make as I did before.

Ques. 8. Were you acquainted in Cadiz with Mr. Elza Scott?

Ans. Yes, sir.

Ques. 9. Do you remember whether these ploughs were manufactured before he left Cadiz—while he was living in Cadiz?

Ans. I think they were.

Ques. 10. For what purpose was Laizure manufacturing these ploughs; that is, were these ploughs which you saw in his shop for sale or not?

(Objected to as incompetent and immaterial.)

Ans. I don't know what he was getting them up for; I don't know whether they were for sale or not.

Ques. 11. How came you to see these ploughs?

Ans. Seen them passing through the shop.

Ques. 12. Had you any reason to believe that they were not, like other articles in his shop, for sale?

Ans. I don't know whether they were for sale or not.

Ques. 13. Were they or were they not exposed in his shop like other articles manufactured there?

Ans. These pieces were just lying there by the anvil-block; that is all I can tell you.

483 Cross-examination by complainants' counsel, WILLIAM BEHRENS, representing M. D. Leggett & Co.

Cross-ques. 1. Can you state in what month of the year 1853 you moved from Cadiz?

Ans. I cannot; I don't recollect.

Cross ques. 2. May it not have been as late as November or December that you moved from there?

Ans. No; It wasn't that late, I think.

Cross-ques. 3. Can you positively swear that it was in 1852 that you saw an iron beam double-shovel plough at Laizure's shop in Cadiz, Ohio?

(Objected to as incompetent, the witness having already testified on that point.)

Ans. I could not positively swear, but it was as near as I can recollect.

Cross-ques. 4. Did you see a complete plough of that description at Mr. Laizure's shop?

Ans. I never seen one finished at his shop, but seen them at Slemmons' shop.

Cross ques. 5. Did you get at that time, from seeing part of the uncompleted plough, any idea of what a completed plough would look like?

Ans. I don't suppose I would; but afterward I seen them finished, but not at Laizure's shop. I don't have a recollection of ever seeing any at his shop finished.

Cross-ques. 6. Can you state when it was you first saw a completed plough of this description?

Ans. Couldn't state certain; can't state any certain time; couldn't name any certain day or date.

Cross ques. 7. Then you do not know whether it was in 1853 or 1854 that you first saw a complete plough of this description?

(Objected to as containing an assumption not warranted by the testimony, and as leading, and further, the witness already having testified on that point.)

Ans. It must have been in the fall of 1853 that I saw one completed.

484 Cross-ques. 8. Did you continue to make woodwork for Mr. Laizure up to the time you moved away from Cadiz?

Ans. No, sir.

Cross-ques. 9. When did you stop making for Mr. Laizure?

Ans. I don't know that I can tell you just exactly; I can't tell you the time.

Cross-ques. 10. Did you make woodwork for his double-shovel wooden beam ploughs?

Ans. No; I never made any that I recollect of.

Cross ques. 11. Did you see any parts of the iron beam double-shovel plough while you worked for Mr. Laizure?

(Objected to as not in cross-examination.)

Ans. I was n't working for Mr. Laizure; I was carrying on on my own hook.

Cross-ques. 12. Do you recollect when Mr. Elza M. Scott moved away from Cadiz?

Ans. Yes, sir; he moved away from there in 1852.

Cross ques. 13. Do you recollect what month of 1852?

Ans. No, sir; I don't.

Cross-ques. 14. Can you swear positively that double-shovel iron beam ploughs were manufactured before he left Cadiz?

(Objected to, witness having already testified on that point.)

Ans. Can't swear positively.

Redirect examination by ARTHUR STEM, Esq.:

Ques. 1. In answer 4 of your direct examination you say that you first saw these iron beam double-shovel ploughs at Laizure's shop in 1852. Did you, or did you not, see such a plough completed at that time?

(Objected to as an attempt to confuse witness, he having already clearly testified on that point.)

Ans. No, sir.

Ques. 2. What did you see?

Ans. I saw the curved iron beams.

Ques. 3. Was Laizure making these curved iron beams?

485 Ans. They were in the shop; I couldn't tell you whether he was making them or his hands. He had hands working then.

Ques. 4. Was it after this that your work in making wooden cultivators declined?

Ans. Yes, sir; it was after that.

Ques. 5. From what you saw, for what did you suppose these curved iron beams were intended?

Ans. I suppose for a double-shovel plough.

Recross-examination by WILLIAM BEHRENS:

Cross-ques. 1. How long after you saw the pieces before referred to in Laizure's shop did you notice that the demand for wooden double-shovel ploughs declined?

Ans. I don't know anything about wooden double shovels; cultivators was what I spoke of.

Cross-ques. 2. You don't know then whether the demand for wooden double-shovel ploughs declined or not?

Ans. No; I don't know anything about the wooden double-shovel ploughs.

Cross-ques. 3. State the difference between a cultivator and a wooden double-shovel plough.

Ans. The cultivators have five or six small shovels; we call them cultivator teeth.

Cross-ques. 4. How long after you saw these pieces in Laizure's shop did you notice that the demand for cultivators decreased?

Ans. I couldn't tell you just how long.

And further deponent saith not.

JOHN MILLER.

Testimony of Elza M. Scott.

ELZA M. SCOTT, a witness produced on behalf of the respondents, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by ARTHUR STEM, Esq., of counsel for the respondents, as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is Elza M. Scott; my residence is Cambridge,

486 Guernsey County, O.; my age is fifty-five years; I am proprietor of Scott's Coal Mines and Salt Wells, and I manage the business of mining and shipping coal, and manufacturing and shipping salt.

Ques. 2. I now show you Complainant's Exhibit Original Model, and ask you if you ever saw a plough made after that model, with the curved

iron beams diverging from the clevis, and bent downward to form standards for the shovels; if so, when you first saw such a plough?

(Objected to as leading.)

Ans. I have, at the town of Cadiz, Harrison County, Ohio.

Ques. 3. Who made the ploughs you saw there?

Ans. Elijah Laizure, of Cadiz.

Ques. 4. When did you first see these ploughs?

Ans. As early as 1850 or 1851.

Ques. 5. How do you fix the date?

Ans. From the fact that I moved from there in the fall of 1850, December, and was back there frequently up to August, 1851, and never have been there since. My foundry and his shop were on the same lot. I did his casting, and he did my blacksmithing.

Ques. 6. Are you sure that you saw these ploughs in Cadiz?

Ans. I don't recollect anything about the handle, whether iron or wood, but I saw him working at these ploughs, with the curved iron beams coming together at the clevis.

Ques. 7. Was he, or was he not, making these ploughs for sale and offering them for sale?

(Objected to as immaterial and irrelevant.)

Ans. That was his business; he was a plough manufacturer, in connection with his other business. I saw him exhibit the same kind of a plough at the fair in Muskingum County, one or two years after that; pretty soon after that.

Ques. 8. Did you know of any one else making these ploughs?

Ans. I did not.

487 Cross-examination by WILLIAM BEHRENS, esq., as aforesaid:

Cross-ques. 1. At what time in the fall of a year did you move from Cadiz?

Ans. In the month of December.

Cross-ques. 2. How do you fix the year 1850 as the year when you moved away from Cadiz?

Ans. There are many things; the change of my books and my business; the birth of our third child in February, after we moved—I referred to our Bible yesterday.

Cross-ques. 3. Did you visit Laizure's shop often?

Ans. Yes, sir. When I was at home, from two to three times a day; sometimes oftener; we were all right there together.

Cross-ques. 4. Were the beams of those ploughs that you saw at Laizure's constructed of wood or iron, in 1850 and 1851?

Ans. Iron.

Cross-ques. 5. Are you positive as to that fact?

Ans. Yes, sir.

Cross-ques. 6. Did you see any double-shovel ploughs of that construction at his shop, constructed with wooden beams?

Ans. Yes, sir; I have.

Cross-ques. 7. During what years?

Ans. Prior to that time, and probably at that time.

Cross-ques. 8. Did you see him make any wooden ploughs in the year 1851?

Ans. I wouldn't be positive as to that.

Cross-ques. 9. Did you pay any attention to the particular construction of the iron beam or the wooden beam ploughs?

Ans. I did to the iron beam, as it was something rather novel and new; that was what attracted my attention.

Cross-ques. 10. Do you know how the beams were joined together?

Ans. I wouldn't be positive whether they were joined right at
488 the clevis, or some distance back; the principle was substantially like this (referring to the original model). I don't know whether they were riveted or welded, or how.

Cross-ques. 11. Do you know whether the handles were of iron or of wood?

Ans. I don't know, wouldn't say, my best recollection whether he had handles on what I seen; at least what attracted my attention most, were these iron curved beams (referring to original model).

Cross-ques. 12 Did you ever see one of these iron beam double-shovel ploughs completed?

Ans. I couldn't say that I did in 1850 or '51.

Cross-ques. 13. You were not at his shop at any time during the year 1852 ar 1853, were you?

Ans. No, sir.

Cross-ques. 14. Then you never saw a completed plough of the description aforesaid at Laizure's shop?

(Objected to as leading, and containing an assumption of fact.)

Ans. I may or may not; wouldn't be positive whether I seen one completed.

Cross-ques. 15. While in Cadiz, or during your visits there after you moved from there, did you see ploughs of this description, complete or incomplete, at any other place than at the shop of Laizure?

Ans. Not to the best of my recollection.

Cross-ques. 16. Then you never saw a completed plough until after you had moved from Cadiz, did you?

Ans. I wouldn't be positive as to that.

Cross-ques. 17. Did you ever hear of one of these ploughs being sold while you were in Cadiz?

Ans. My recollection is that one was put on trial and brought back for some alteration or repairs; don't know as to the selling.

Cross-ques. 18. Did you notice whether there was a continuous bar of iron from the clevis to the shovel, or whether there were two pieces bolted together somewhere between these points?

Ans. It was in one continuous piece.

489 Cross-ques. 19. Since you have no recollection of the mode of fastening, you cannot positively swear, therefore, that the beams were rigidly secured to each other, can you?

Ans. They were solidly fastened together at the Clevis. I am as positive of that as anything else about it.

Cross-ques. 20. Have you ever given any attention to the construction of ploughs as a study?

Ans. Not since that time when I went out of the foundry; at that time I was conversant with it. We made a great many castings of ploughs, of many different patterns.

And further deponent saith not.

E. M. SCOTT.

THE STATE OF OHIO,
Guernsey County, ss:

I, J. W. Campbell, a notary public within and for the county of Guernsey, and State of Ohio, do hereby certify that the witnesses aforesaid, John Miller and E. M. Scott, were each first duly sworn to testify the truth, the whole truth, and nothing but the truth, in the suit aforesaid pending in the circuit court of the United States for the district of Kentucky, in which W. W. Leggett et al. are complainants and B. F. Avery et

al. are respondents; that the deposition of the said John Miller and of the said E. M. Scott were reduced to writing by me; that the deposition of the said John Miller and of the said E. M. Scott were written in the presence of the said witnesses respectively, and subscribed by the said witnesses respectively in my presence, after having been read over to the same by me; that said depositions were taken at the time and place specified in the notice annexed hereto, and that I am neither related to nor counsel of either of the parties to this suit, nor in any way interested in the event of the same, and that counsel aforesaid were present during the entire examination.

In testimony whereof I hereto subscribe my name and affix my official seal this 23d day of September, 1876.

[SEAL.] JAMES W. CAMPBELL,
Notary Public.

490 Circuit court of the United States for the district of Kentucky.
In equity.

W. W. LEGGETT ET AL.
v.
B. F. AVERY & SONS. } No. 3016.

The complainants will take notice that the respondents will examine witnesses in the above-named cause, under the 67th rule in equity, as amended, before competent authority, at the office of Hatch & Parkinson, No. 8 West Third street, Cincinnati, Ohio, on Friday, the 29th day of September, 1876, beginning said examination at o'clock, a. m., of said day, and continuing from day to day until completed.

HATCH & PARKINSON,
Solicitors for Respondents.

Received copy 27th of September, 1876.

M. D. LEGGETT & CO.,
Solicitors for Complainants.

Circuit court of the United States for the district of Kentucky. In equity

W. W. LEGGETT ET AL.
v.
B. F. AVERY & SONS.

It is hereby stipulated and agreed between counsel that the defendants' time for taking testimony shall be regarded as extended to include Monday, October 9, 1876.

ARTHUR STEM,
Notary Public.

Circuit court of the United States for the district of Kentucky. In equity.

W. W. LEGGETT ET AL.
v.
B. F. AVERY & SONS.

491 Examination of witnesses on behalf of the respondents, under the sixty-seventh rule in equity, as amended, pursuant to the annexed notice.

Present, W. W. Leggett for the complainants and Robert H. Parkinson for the defendants.

By request of parties, it is ordered that these depositions be taken by question and answer.

Testimony of Frank Millward.

FRANK MILLWARD, a witness produced on behalf of the respondents, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by ROBERT H. PARKINSON, Esq., of counsel for the defendant, as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. Frank Millward; age, forty-two; residence, Ludlow, Kentucky; business office, Cincinnati, Ohio; occupation, solicitor of patents and mechanical engineer.

Ques. 2. Please state what opportunities, if any, you have had of becoming familiar with the construction and operation of different mechanical devices, and what experience, if any, you have had in comparing such devices for the purpose of ascertaining their similarity or difference in design, construction, and mode of operation.

Ans. For twenty-seven years I have been wholly engaged in mechanical occupations, successively as practical machinist, draftsman, superintendent of manufactures, and solicitor in the preparation of applications for letters patent, during which time I have become familiarized with the principles of mechanism, and the application thereof to the construction of machines. I am almost daily called upon to compare mechanical structures with the view of determining, if possible, their substantial similarity or dissimilarity, and to frequently testify as an expert in the United States courts in patent cases.

Ques. 3. Please examine the certified copy of reissued letters patent No. 6131, granted Mathew G. Slemmons, assignor to Leggett & Leggett, November 10, 1874, for improvement in ploughs, and state whether you understand the devices described and claimed in said letters patent.

492 Ans. I have carefully examined and believe I understand the construction and operation of the plough shown and described therein.

Counsel for respondents here offers in evidence the following certified copies of letters patent:

Certified copy of letters patent granted Marshal & Seaborn J. Mims, December 23, 1841, and marks the same respondent's exhibit, Meims' patent of 1841.

Also certified copy of letters patent granted Isaac Edwards, September 19, 1846, and marked respondents' exhibit, Edwards' patent of 1846.

Certified copy of letters patent granted George M. Brown, June 5, 1849, No. 6,511, and marked respondents' exhibit, Brown's patent of 1849.

Certified copy of letters patent granted Samuel Hall, April 25, 1848, for improvement in ploughs, and marks the same respondents' exhibit, Hall patent of 1848. Application of 1852.

Certified copy of letters patent granted to James H. Foreman, February 10, 1852, and marks the same, Foreman patent of 1852.

Certified copy of letters patent granted Washington Pagett, March 30, 1852, for improvement in shovel ploughs, and marks the same respondents' exhibit, Pagett patent of 1852.

Certified copy of letters patent granted Nathan Harrison and John W. H. Metcalf, October 1, 1853, and marks the same Respondents' exhibit Harrison & Metcalf patent of 1853.

Certified copy of letters patent granted George G. Black, July 14, 1857, for improvement in cultivator plows, and marks the same Respondents' exhibit, Black patent of 1857.

ARTHUR STEM,
Notary Public.

493 Ques. 4. Please examine the several letters patent now shown you and state whether or not you find in them, or any of them, the improvements described in the Slemmons reissued patent, No. 6131, and more particularly claimed in the first two claims thereof. Please state what invention, if any, you find in said reissued letters patent in view of the state of the art, as shown by the several exhibits referred to, giving your reasons in full for any opinions you may express. (The witness is here referred to the several letters patent offered in evidence.)

Ans. I have examined and believe I understand the improvements shown and described in the several exhibits to which I am now referred, and have compared the same with the improvement in ploughs described in the Slemmons reissue, No. 6131. In order that my comparison may be understood, I shall have to state my understanding of the improvements set forth in the first and second claims of the Slemmons reissue, to which my attention is confined. After a careful examination of the Slemmons patent, I find that that part of the improvement which is made the subject-matter of the first claim is referred to in the preamble of the specification, in the following language: "Another object is to unite the front ends of the plough-beams in such a manner that the draft ring or clevis, by which the plough is drawn, will pull equally upon said ends, as will be hereinafter explained." The plough-beams referred to in this language are described in the patent as necessarily having the standards for the shovels formed thereon, or made a part of the beam itself. The beam and standard are shown in one piece curved downward from the horizontal part of the beam to connect with the shovel, and this forming of the shovel standard and beam of the same piece of material, bent downward, is one of the essential requisites of the improvement described in this patent, and set forth in the first claim. I do not, however, understand that the invention is important, as the patent distinctly represents that the chief feature is the formation of the standard, by bending the metal of the beam down so that the beam and

494 standard are of the same piece of metal, thereby affording great strength, and admitting of the parts being made much stronger and with greater facility than if each beam and its standard were made of separate pieces, and then secured together by bolts, rivets, or otherwise. The curved form, as shown and described in this patent, however, is described as preferable, for the reason that it is stronger than an abrupt or angular shoulder. The claim itself reads as follows: "Two diverging beams that have their rear ends bent to form shovel standards, the said beams being fastened rigidly together, substantially as described at, and springing from, the point of attachment for the draft."

So that I understand it to be necessary that there should be two beams, and that these beams should be turned downward at their rear ends to form the shovel standards in one piece therewith, and that these two beams shall come together, and be rigidly secured at the point to

which the draft is applied, the lines of divergence from the central line of the draft of the two beams being equal, so that the draft may be equally distributed upon the shovels.

I am referred to the exhibits recited in the question, and am asked to state, first, whether I find in any of these exhibits the improvements specified in this first claim.

To simplify the comparison I will state, that to possess all the essential requisites of the improvement recited in this first claim, it is necessary that a plough have:

1st. Two beams.

2d. Standards for the shovels, formed by the bending down of the material of the beams.

3d. A rigid fastening together of the beams at their front ends.

4th. A point of attachment for the draft, from which point the beams spring or diverge.

I find that the Exhibit Edwards Patent of 1846 is a plough or cultivator, having, as is shown, three beams to which the shovels are attached. The patent, however, states that "The loose manner in which this plough is constructed makes it easy to take it apart, and, if desired, to
495 remove entirely the middle beam, operating only with the outside ones." This plough, therefore, can fairly be said to be one having two beams, and fairly within the meaning of the first requisite of said first claim. It has also a rigid connection of the two beams together at their front ends, so that they diverge equally from the line of draft, exactly as required, as a third requisite of the said first claims. And the point of attachment of the draft is also the center of the clevis, and the exact point from which the beams spring or diverge, precisely as required by the fourth requisite of said first claim. The only requisite lacking, in this exhibit, is the standards formed by the bending down of the material which forms the beams. The standards, in this exhibit, are separately attached to the beams.

The Exhibit Harrison & Metcalf Patent of 1853 fully answers the second requisite of said first claim, in this, that its beam is bent down, in a curved form, to form the standard which supports the shovel or share. It does not have two beams, and therefore does not embody the other three requisites.

The Exhibit Brown Patent of 1849 shows a cultivator having two beams, to which the shovels are indirectly attached. And these two beams diverge equally from the line of draft; but the point from which they spring is at the rear of, and not at the point of attachment of the draft. This implement, therefore, meets the first condition, in having two beams; and meets the third, in having the beams rigidly connected together at their front ends, so as to equally diverge; but it has not the second, to wit, standards formed by the bending down of the beams; and has not the fourth, to wit, the point of attachment of the draft at the point from which the beams diverge.

The Exhibit Hall Patent of 1848 shows a plough with one beam only. It, therefore, does not embrace the first, third, and fourth requisites of the first said claim; but owing to the fact that its beam is turned downward, in a curved form, to form the standard for the shovel or shares, it is a substantial embodiment of the second requisite.

The Exhibit Foreman Patent of 1851 answers, in the same way,
496 and to the same extent as the Hall patent, in this: that it shows a plough beam bent down to form the standard for the shovel.

The Exhibit Mims Patent of 1841 exhibits a plough having an iron

beam with a standard for the ploughshare bolted thereto also of iron; the standard curving forward, to support the shovel, similar to the curving forward of the standards in the Slemmons patent. This exhibit also describes a plough having two standards of this description attached to beams diverging equally from the line of draft. Owning to the fact that these standards are fastened onto the beams, and that the point from which the beams diverge is, to a considerable extent, in the rear of the attachment for the draft, this plough does not meet the first and fourth requisites of the said first claim; but as it has two beams, and these two beams are rigidly connected at their front end, it does meet the first and third.

The Exhibit Black Patent of 1857 fulfills every requisite of the said first claim of reissue 6131, in this: that it shows and describes a cultivator or double-shovel plough having:

First. Two beams.

Second. Standards formed by the bending down of the metal of which the beam is composed.

Third. A rigid connection of the beams at their front ends, so that they diverge equally from the line of draft.

Fourth. A point of attachment for the draft, from which the beams spring or diverge.

The Exhibit Pagett Patent of 1852 shows and describes a shovel plough, having a beam of metal, which, at its front end, has an attachment for the draft, and whose rear end is bent down just like the beams are in the Slemmons patent, to form standards for attachment of the shovels.

This patent also describes a double-shovel plough, with the same beams bent down to form standards like the ones shown in the drawing thereunto attached. The specification states as follows: "To make a double shovel on this plan, the main beam and sheath and the one applied must diverge equally from the line of direction or front of
497 the beam. A brace must pass from one to the other of these sheaths about ten inches above the attachment of the shovels." A double-shovel plough, made in accordance with the express provisions and illustrations embraced in this exhibit, would be one having two diverging beams, that have their rear ends bent to form shovel standards, the said beams being fastened rigidly together, so as to diverge equally from the line of draft, and springing from the point of attachment for the draft precisely as contemplated in the construction of the improvement specified in the first claim of reissue No. 6131, as it has all the four requisites of that improvement

The improvement which was made the subject-matter of the second claim of reissue 6131 is referred to in the preamble of the specification as follows:

"One object of this invention is to construct a double shovel plough whose shovels are secured to standards that are formed upon and that form a part of their respective beams, which latter converge toward their front ends, and have a clevis so attached to these ends that the draft of the team will act equally upon both beams, as will be hereinafer explained"; and the claim reads as follows:

"Two diverging beams, A A, that have their rear ends bent to form shovel standards, and their front ends fastened rigidly together and merged into a device, substantially as described, whereby the plough may be attached to the draft." I am of opinion, therefore, that this is the same improvement as that referred to in the first claim, except that the fourth requisite is omitted. In other words, it is not declared im-

portant for this part of the improvement that the beams shall diverge or spring from the point of attachment of the draft, and in place of this a new requisite was added, to wit, a clevis device, into which the beam is merged, which, as the preamble says, is attached to the front ends thereof.

The Exhibit Edwards Patent of 1846 shows the precise form of clevis which is illustrated and described in the Slemmons reissue 6131, and if the plough or cultivator in this exhibit had beams which were
498 turned down to form the standards, it would meet every requisite or characteristic of the improvement specified in the second claim.

The Exhibit Harrison & Metcalf Patent of 1853 shows and describes also a clevis attached to the front end of the beam for the attachment of the team, and the same may be said of Exhibit Hall Patent of 1848.

In the Exhibit Foreman Patent of 1851, Mims Patent of 1841, and Pagett Patent of 1852, no clevises are attached to the beams, but the beams are formed into hooks in the Mims and Foreman, and into an eye in the Pagett, for the attachment of the ring or chain of the whiffletree. As it is made essential that the beams shall be merged into a device which is attached thereto, to form a clevis or equivalent, neither of these three exhibits can be said to embrace the fourth requisite of the said second claim, to wit, the clevis device; but if the construction of the beam for the attachment of the drafts, as shown in these exhibits, is construed to be the clevis device referred to in the second claim of reissue 6131, then I say that if the beam and standards of the Mims patent were in one piece, this patent would embrace the improvement specified in the said second claim; and the Pagett patent then shows and describes a plough having all the requisites of the improvements specified in the said second claim, including the most striking feature of supposed novelty, to wit, the formation of the standards by the bending down of the rear ends of the beams.

In answer to that part of the question which asks me to give an opinion as to whether, in view of the state of the art, there was any invention in the production of the devices referred to in the first and second claims of reissue of 6131, I will state that the most important feature set forth in the Slemmons patent aforesaid is the formation of the standards by the bending down of the beams, and this feature is found distinctly shown and described in the Black patent, the Pagett patent, and the Hall patent.

The feature of the two beams is found in a number of the patents to which I have referred, as also the two beams connected together
499 at the front ends, so as to diverge equally from the line of draft, and so also is the feature of springing or diverging the beams from the point at which the draft is attached, and the Black patent embraces every feature of the several improvements specified in the said first and second claim of said reissue No. 6131 and the Pagett patent of 1852, if the eye in the beam therein shown is construed to be a clevis, embraces every feature of the two improvements specified in the first and second claims of the Slemmons reissue 6131. I am therefore of the opinion that in the production of the Slemmons devices, as set forth in said two claims, there was no exercise of ingenuity or inventive faculty.

(Counsel for complainants objects to all that part of the answer which refers to the Black patent of July 14, 1857, as immaterial, being of a date two years and six months later than the date of Slemmons' application for letters patent.)

Ques. 5. Please examine the Respondent's Exhibit Ryan Plough and Respondents' Exhibit Wooden Plough No. 1, and state how far, if at

all, you find embodied in both of these ploughs the improvements described in the Slemmons reissue 6131, and claimed in the first two claims thereof, giving your reasons for any opinion you may express.

Ans. The Exhibit Wooden Plough is one having two shovels and two wooden beams diverging equally from the line of draft, and the front ends of the beams of this plough are pierced and fitted with a ring for attachment of the team, and the beams are connected together at their front ends, the line of divergence being from the point at which the draft is attached. This plough is therefore one having the first requisite of the first claim, to wit, two beams, and the third requisite in having the two beams rigidly connected together at their front end and diverging equally, and the fourth requisite in having the beams spring or diverge from the point at which the draft is attached. This plough also has the attached clevis device, which is made one of the features of the second claim, and it substantially embodies the two improvements specified in the first and second claims, if it were not
500 for the existence in each claim of the requisite which calls for the bending of the beams downward to form shovel standards. In this wooden plough the standards are attached to the beam separately.

Assuming that the ring at the end of the beams in Respondenst' Exhibit Ryan Plough is a clevis, in the meaning of the Slemmons patent, then the said Ryan plough is a full embodiment of the improvement set forth in the second claim of th e Slemmons reissue 6131, for the reason, first, that it has two beams; second, standards formed by the bending down of the beams; third, rigid connection of the beams at their front ends; and fourth, a clevis device into which the beams are merged. And as it has all the four requisites which I have enumerated, which are necessary to make up the improvement specified in the first claim of reissue 6131, I am of the opinion that said Ryan plough embraces the improvement specified in said first claim.

Ques. 6. Please examine Defendants' Exhibit B. F. Avery & Co. Plough, and state how far, if at all, you find embodied in said plough the improvements described in the Slemmons reissue No. 6131, and claimed in the first two claims thereof, giving your reasons in full for any opinion you may express.

Ans. I have stated that the Slemmons reissue 6131 makes it one of the essentials to the fulfillment of the conditions of the first claim that the beams shall be fastened rigidly together at and springing from the point of attachment for the draft. I can't say, as a mechanic, why this condition should be insisted upon, as it is of so little consequence whether the beams are welded together at the point where the draft is attached or a foot in the rear thereof. The little difference it does make is just this: That where the junction of the two beams is at the point at which the draft is attached, the strain is communicated directly in the lines of the beams, and not at the sides thereof, and at an angle therewith. This little difference is in favor of the welding together at the draft point, as lighter iron could be used for the beams. For the reason that in the Exhibit B. F. Avery & Co. Plough, the beams
501 are welded together a considerable distance in the rear of the draft point, I am of the opinion that it does not embrace the improvement specified in the first claim of reissue No. 6131, and this is the only reason why I say so, as this Avery plough does embrace, of course, the other three requisites, to wit, the two beams, the standards formed by the bending down of the beams, and the rigid connection of the beams at the front ends. For the reason also that this Avery

plough has no clevis device attached to its beams, I am of the opinion that it does not embrace the improvement specified in the second claim of the reissue No. 6131. This exhibit, in place thereof, has a hook at its front end like the hook shown in Exhibit Forman Patent and Exhibit Mims Patent for attachment of the team.

Cross-examination by W. W. LEGGETT, Esq., counsel for the complainants:

Cross-ques. 7. Is it not true that in the Avery plough that after the beams come together at their front ends the metal is then gradually drawn out and formed into the hook for the attachment of the draft?

Ans. I could not tell that, as it is possible that the hook is formed separately and welded on near the junction of the two beams. It may, however, be as the question states.

Cross-ques. 8. In any event, the forward ends of the beams are merged into a means for attaching the implement to the draft; is not that true?

Ans. Yes; I think it would be fair to say so.

Cross-ques. 9. And that means in this instance is a hook?

Ans. Yes.

Cross-ques. 10. Now, in the Slemmons plough, as shown in the reissued patent, the forward ends of the beams are merged together into a single piece, and formed into an eye, whereby an attachment may be made for the draft; is not that true?

Ans. They are merged together, by welding or otherwise, and, as the patent states, they merge into a draft ring or clevis, and
502 that the clevis is so attached to these welded ends that the draft of the team will act equally upon both beams. It is not quite correct, therefore, to say that the merging is into an eye, but into a clevis.

Cross-ques. 11. But that which you term the clevis in Slemmons' patent is the ring and the pivot that passes through the eye in the end of the beams, is it not?

Ans. Yes.

Cross-ques. 12. And that is a separate attachment to the beams, is it not?

Ans. Yes.

Cross-ques. 13. And the beams are simply merged together, and an eye formed in the welded end by which this clevis can be attached; is not that true?

Ans. Yes.

Cross-ques. 14. Then, disregarding the clevis ring, the ends of the beams in Slemmons' device are welded together and terminated directly into a means whereby an attachment can be effected to the draft; is not that true?

Ans. Yes.

Cross-ques. 15. Do you find in any of the patents examined by you, except in that one to Black, that two iron beams were welded together at their front ends, and then merged directly into a means for attachment to the draft?

Ans. I don't think the term welding is employed in any of the patents that I have referred to. The Mims patent shows a single bar, ending with a hook, which diverges into two beams for the ploughs. How these are fastened together does not distinctly appear, but it looks as if they are fastened rigidly by a bolt marked é. Leaving out the word welded in question 3, and substituting fastened together, this exhibit would meet the conditions of the question, and the same may be said of the G. W. Brown patent, and the Edwards patent. The Pagett patent does

not state in what way the two beams are fastened together. It simply says that one is applied to the other, and this also would meet the conditions of the question, unless the word welded is insisted upon. I may add further that the Edwards and Brown patents would
503 not meet the condition of the word iron in the question.

Cross-ques. 16. I want no theories, nor do I want the question changed; but answer the question as it is.

Ans. I am not quite certain that the word welded does not appear in the patents referred to, or I should answer no at once. If this word or equivalent, the word welding, for example, is not in those patents, I answer no to the question.

Cross-ques. 17. Referring to your answer to question 4, to the Edwards device, you say the beams are fastened rigidly together at their front ends. Now please examine the Edwards patent, and especially its claim and the drawing, and state whether it is not a fact that, instead of the beams being fastened rigidly together at their front ends, they are fastened together loosely, and one of the objects of the construction is to permit either beam to ride or be lifted over obstructions without interfering with the other beams.

Ans. The clevis which connects the two sides to the center beam is not shown clearly as to the means of securing it, but I presume it is a bolt, and not operating through the eye of the clevis, and when these three beams are used it is provided that the side beams may rise with relation to the center one. When the center beam is omitted altogether, the side beams would be connected by the same clevis device, by the drawing up of the bolt, so as to make the junction rigid.

Cross-ques. 18. Do you or do you not understand that it is an essential feature in the Edwards' patent that the beams be fastened loosely, and not rigidly together, at the clevis?

Ans. When the three beams are used, and the device claimed embodied in the machine, it appears to be necessary to have loose joints; but when such is used, even that is loose only in one direction, and rigid in every other.

Cross-ques. 19. That is, I understand they have a motion around the clevis bolt as an axis?

Ans. Yes; when the three beams are used.

Cross-ques. 20. Is there any language in the Edwards patent
504 which signifies that there is not the same motion when but two beams are used?

Ans. I think not; but when two beams are used, such motion is unnecessary, if not ruinous to its operative function.

Cross-ques. 21. In the Harrison & Metcalf patent is there any attachment of the ploughshare to the curved part of the beam, or is the ploughshare simply arranged to turn around the end of this curved part of the beam as an axis?

Ans. The lower end of the beam enters the land side, and the land side swivels upon the end.

Cross-ques. 22. And the share is supported from the front and top by other means, as well as from the rear by the bent beam?

Ans. Yes.

Adjourned to Saturday morning, September 30, 1876, at 9 a. m.

ARTHUR STEM,
Notary Public.

Pursuant to the above adjournment, the taking of testimony in the

above entitled cause is resumed this (Saturday) morning, September 30 1876. Same parties present.

ARTHUR STEM,
Notary Public.

Cross-ques. 23. Is it not a fact that in none of the patents examined by you, except that one to Black, is there shown two beams fastened rigidly together at and springing from the point of attachment for the draft?

Ans. Owing to the word shown in the question, I have to answer "No." In the Edwards patent two beams are described as being adapted to be used alone without the third beam, and adapted to be rigidly screwed together, but the drawing does not show this said beam removed; they, however, may be regarded as rigidly fastened together in one sense, as the third beam between them serves as simply a lever or block to fasten to, and in this case the two beams spring from the point
505 at which the draft is applied, or, in other words, as the question states, spring from the point of attachment for the draft, and the Mims patent shows every feature expressed in the question, except that it does not show the point of divergence springing from the point of attachment for the draft, as it does, like the Avery plough, spring from a point in the rear thereof. It, however, shows two beams diverging equally from the line of draft, and rigidly fastened together. The "Pagett patent" does not actually show two beams, but it contemplates the construction recited in the question precisely.

Cross-ques. 24. You refer, I suppose, to the construction shown in figure 2 of the "Mims patent." Is there not in that case a distinct single-beam plough, C, in front, of a length nearly equal to half the whole length of the structure, and to which a wheel, G, and its braces, H and I, are attached?

Ans. Yes; the two beams unite into one, or are fastened to one which projects forward to hold the wheel referred to, and to form the back for the draft.

Cross-ques. 25. And in figure 2 of the "Meims patent" does not the forward plough project far more than half its length in front of the point where the two beams come together?

Ans. Yes; the point of the ploughshare does.

Cross-ques. 26. Please examine Slemmons' patent, No. 6131, and state which one of its beams in figure 1 or figure 3 is the main beam; is it the beam nearest the bottom of the page, or the beam nearest the top of the page?

Ans. I should regard the longest beam as the main beam. That is, the one nearest the bottom of the page in Fig. 3. The specification, however, does not draw this distinction.

Cross-ques. 27. Is there really any main beam in the Slemmons plough?

Ans. There is no central beam, but simply two beams of unequal length, connected so as to diverge equally from the line of draft. The longest may be called the main beam—properly so, I think; but
506 it is not so called in the patent. There is no main beam in the sense in which that term is used in ploughs and cultivators having three or more beams, in which side beams are attached to central arms.

(Complainant's counsel here produces the certified copy of the specification and drawing of the application for letters patent for cultivator of W. F. Pagett, filed January 22, 1852, and rejected, and marks the same

for identification, Complainant's Exhibit, Pagett's Rejected Application, January 22, 1852.)

Cross-ques. 28. Please examine the exhibit "Pagett's Rejected Application," and state which beam is the main beam, properly speaking?

Ans. The central one in this case, marked A.

Cross-ques. 29. And, properly speaking, what portion of that main beam would you call the front of the beam, if you were to employ that term?

Ans. The extreme forward end.

Cross-ques. 30. Might not the extreme forward end of the beam be called the front end, and the term "front of the beam" be applied, as contradistinguished from the rear of the beam, to that part which extends forward, or in front of the side or applied beams?

Ans. I don't recognise any difference between the term front and the term front end, as a beam has a front and a rear with relation to the draft, and these terms, front and rear, apply to the ends of the beam. To what extent the length of the beam at either end the term front or rear may be limited, it is impossible to say. The term front may in this case possibly be applied to that portion of the beam which is in advance of the diverging side beams.

Cross ques. 31. Suppose the following language to apply to the device shown in the exhibit, "Pagett's Rejected Application": "On each side of the beam and sheath may be attached a shorter piece, corresponding in shape with the last-mentioned beam and sheath, thus making three sheaths, which, with the addition of three small shovels, will answer the purpose of a cultivator. To make a double shovel in this
507 plough, the main beam and sheath, and the one applied, must diverge equally from the line of division or front of the beam; a brace must pass from one to the other of these sheaths, about ten inches above the attachment of the shovels." Do you or not find that this description would apply, as regards the change from a single to a double or three shovel cultivator, so far as regards the main beam and the ones applied?

Ans. The term shape would not apply to the beams shown in the rejected application, as they are nothing but straight beams, not bent to form standards; but the language, with reference to the formation of the three-shovel ploughs, with the exception of the word shape, would be complied with in the construction of the cultivator shown in the Pagett rejected application. There is nothing shown, however, in this application which answers the description quoted, in so far as it applies to a two-shovel plough. It is obvious that when it is a two shovel plough, made in accordance with the description given, the beam called the main beam does not extend from front to rear in the line of the draft; but, as the language states, it diverges equally from the line of direction or front of the beam, and the only difference between the beams, in that case, would be that one would be longer than the other.

Cross-ques. 32. In the Pagett rejected application, in order to change the device to a double-shovel plough, it would only be necessary to take off the middle sheath, I; is that not true?

Ans. That would make a double shovel plough, of course, but not in accordance with the language quoted.

Cross-ques. 33. And if it was desired that the two side beams should then diverge equally from the main beam, it would only be necessary to move the side beam C forward, so as to be fastened by the same two bolts that secure the side beam B to the main beam?

Ans. Yes.

Cross-ques. 34. But if these beams, A, B, and C, all had their rear ends bent down to form shovels, standards, or sheaths, then, in
508 order to change from a three-shovel to a two-shovel plough, the middle bent standard would have to be entirely removed, would it not?

Ans. If it was intended to leave a central beam remaining; yes.

Cross-ques. 35. But if in the Pagett rejected application the sheaths were made by bending down the rear ends of the beams, and it was intended to make a double-shovel plough at the start, would it not be reasonable to suppose that the main beam would be bent outward at the point of attachment of the applied beam, so that the two would form that point, diverge equally from the front or straight portion of the main beam?

Ans. Yes; except that they could not be said to diverge equally from the front part of the beam.

Cross-ques. 36. But it would be true, would it not, in case they termed all the straight forward portion of the main beam as the front of the beam?

Ans. Yes.

Cross-ques. 37. Now, please examine the Pagett 1852 patent, and state whether there is any indication in the patent as to how the handles could possibly be attached, in case it was changed to a two-shovel plough, except by attaching the handle to the main beam in front of the point of divergence?

Ans. There is nothing in the patent to indicate that there is any change in the handle when a two-shovel plough is made. If the handle is still the same as the one shown in the single-shovel plough indicated in the drawing, it would have to be applied to one or the other of the two beams.

Cross-ques. 38. In your opinion as an expert, would a plough having two beams diverging from the clevis, with their rear ends bent downward, and with the Pagett handles attached to one beam only, be a practicable plough?

Ans. It would be operative; but when the handle shown in the Pagett patent is applied to a double shovel plough having two equal diverging beams only, it should have two sockets, one for each beam, so that the handles may be located equally on each side of the line of draft
509 in a double shovel plough, to render it practicable in a business sense. The handles should be located equally on each side of the draft, so that the operator may straddle the row on each side of which the shovels plough.

Cross-ques. 39. But the Pagett patent provides for the elevation and depression of the handles, by sliding the point of attachment up or down on the curved standards. Now, if these beams and standards constantly diverged, would it be practicable to have a socket on the handles for each of the two beams?

Ans. It would not, if the handles were braced or otherwise connected together; that is to say, if the adjustment spoken of was thought to be necessary.

Cross-ques. 40. I now show you a sketch, which I mark Millward cross-examination one; suppose, for the purposes of this question, that in figures 1, 2, and 3 the straight portion A is termed the front of the beam, A′ the rear, or bent portion of the beam, B, C, and D, the braces, the side or applied beams; now, starting with figure 1, suppose we want to make a three-shovel plough, would not the following descrip-

tion describe such a device as is shown in figures 2 and 3: "On each side of the beam and sheath may be attached a shorter piece, corresponding in shape with the first mentioned beam and sheath, thus making three sheaths, which, with the addition of three small shovels, will answer the purpose of a cultivator. * * * A brace must pass from one to the other of these sheaths, about 10 inches above the attachment of the shovels"?

Ans. There is nothing in the quotation about the front of the beam, and I, therefore, do not understand the need of the supposition. But I will say that if figure 1 represents a beam having its rear end turned down to form a shovel standard, figures 2 and 3 of the sketch would represent a three-shovel plough, having the same form of beam and standard, and answering the description quoted correctly.

Cross-ques. 41. Under the same supposition, namely, that the "front of the beam" refers to that straight portion marked A, would not
510 the following description describe such a construction as is shown in figure 4 of exhibit "Millward cross-examination 1": "To make a double shovel on this plan, the main beam and sheath and the one applied must diverge equally from the line of direction or front of the beam, a brace must pass from one to the other of the sheaths, about 10 inches above the attachment of the shovels"?

Ans. Yes; under that supposition.

Cross-ques. 42. Is there any construction of a double-shovel or of a three-shovel plough shown in the drawings of Pagett's 1852 patent?

Ans. No.

Cross-ques. 43. Now, suppose it should appear that the application of Pagett for the device patented to him March 30, 1852, and the application of Pagett filed January 22, 1852, and rejected, were both filed in the Patent Office by the same Mr. Pagett on the same day, one marked A and the other marked B, to distinguish them, would you not suppose that the change from a single plough to a double plough, and to a triple plough, were such changes as are shown in Pagett's rejected application, and in the exhibit Millward Cross-examination 1?

Ans. I would suppose that the change from a single to the triple was to be in accordance with what is shown in the rejected application, and in figures 2 and 3 of the sketch. The rejected application does not show a double-shovel plough, and I would not suppose that the double-shovel was to be made in accordance with what is shown in figure 4 of the sketch, for the reason that the beams in that sketch do not diverge from the front.

Cross-ques. 44. But suppose by the term "front of the beam" Mr. Pagett meant the straight-forward portion of the beam marked "A" in the exhibit, Millward's cross-examination 1, in that case would you not suppose that the construction of the double-shovel plough contemplated was such a construction as is shown in the exhibit "Millward cross-examination 1"?

Ans. Yes. If Pagett meant by the term "front of the beam"
511 that portion of the beam which is shown in figure 1 of the rejected application in front of the point of divergence of beam B.

Cross-ques. 45. Does not the rejected application of Pagett describe how the plow may be changed into a double-shovel plow, a three-shovel plow, or a single-shovel plow?

Ans. Yes.

Redirect by R. H. PARKINSON:

Ques. 46. Please state to what part of the plow the term "front of

the beam" would refer, in the ordinary mechanical use of the term, when applied to a plow similar to that shown in the exhibit, Pagett patent of 1852?

Ans. To the extreme forward end; or, in other words, to that part to which the draft is applied. The front of the beam of an ordinary plow also is that part to which the clevis is attached.

Ques. 47. Do you find anything in this Pagett patent to indicate or suggest that the term "front of the beam" is there used in any other than its ordinary signification?

Ans. No.

FRANK MILLWARD.

Counsel for respondent here offers in evidence the following exhibits:

Certified copy of the decision of the Commissioner in the matter of the application of Matthew G. Slemmons for the extension of letters patent No. 30357 and reissue No. 3514, and marks the same Respondent's exhibit, Slemmons' extension.

Certified copy of disclaimer in the matter of the application of Matthew G. Slemmons for extension of letters patent No. 3514, and marks the same Respondent's exhibit, Slemmons' disclaimer.

Also certified copy of reissue granted Leggett & Leggett, November 10, 1874, for improvement in plows, and marks the same Respondent's exhibit, Leggett reissue.

ARTHUR STEM,
Notary Public.

512 Also letter of Leggett & Leggett to B. F. Avery & Sons, of July 28, 1876, and marks the same Defendant's exhibit, complainant's letter.

ARTHUR STEM,
Notary Public.

Circuit court of the United States for the district of Kentucky. In Equity.

W. W. LEGGETT ET AL.
vs.
B. F. AVERY ET AL.

Examination of witnesses on behalf of the respondents, under the sixty-seventh rule in equity, as amended, by agreement of counsel.

Present, Wm. Behrens, for the complainants, and Wm. S. Bates, for the defendants.

By request of parties, it is ordered that these depositions be taken by question and answer.

Testimony of Jos. B. Ryburn.

JOS. B. RYBURN, a witness produced on behalf of the respondents, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by Wm. S. Bates, esq., of counsel for the respondents, as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. 1. Jos. B. Ryburn; forty-eight; Bloomington, Ill.; farmer.

Ques. 2. Please state whether or not you were ever in Cadiz, O.; and, if yea, when?

Ans. 2. Yes, sir; I was there in the year of 1851 and '52, and spring of '53.

Ques. 3. What was your occupation when there?

Ans. 3. Farming with my brother.

Ques. 4. When did you move away from Cadiz, and what became of your farm machinery when you moved?

Ans. 4. I came away from there in February, 1853; latter part of February. Sold our machinery at auction in March.

513 Ques. 5. Of what did this machinery consist?

Ans. 5. Of ploughs and general farming utensils, I don't remember distinctly. We had the common, what we called the breaking plough, and used double shovels for cultivating corn.

Ques. 6. How many double-shovel ploughs had you?

Ans. 6. I don't remember.

Ques. 7. Who purchased the double-shovel ploughs at the auction?

Ans. 7. I don't remember; that is, I don't know who purchased them, because I wasn't there.

Ques. 8. Do you remember how long these double-shovel ploughs had been in your possession when you moved away from Cadiz?

Ans. 8. I do not. There was no purchase made during the spring of 1853 by my brother or myself. The ploughs were therefore necessarily purchased by us as early as the spring of 1852.

Ques. 9. Please give the full name of your brother who was farming with you at Cadiz at the time mentioned, and his present residence.

Ans. 9. James Ryburn; present residence, Heyworth, McLean County, Ill.

(Objection is here made by counsel for complainants to the depositions of Solomon Glass, Martin S. Kennedy, William Cady, John Campbell, Samuel Hamilton, Tunis L. Hilligas, and Matthew McCoy, witnesses previously examined in this case at Cadiz, Ohio, so far as said depositions relate to a prior knowledge or use of thing patented, for the reason that the names and residences of said witnesses, and the place or places where the uses occurred, are not set forth in the pleadings as required by section 4920 of the Revised Statutes.)

Cross-examination:

Cross-ques. 10. When did you move from Cadiz, O.?

Ans. 10. In the latter part of February, 1853.

Cross-ques. 11. How do you fix that date?

Ans. 11. I fix that date from memory.

514 Cross-ques. 12. Is there no circumstance or memorandum by which you fix that date?

Ans. 12. I don't recall it particularly; only I was fourteen days in coming, and got to Bloomington on the 12th of March, which would make it the 26th of February that I left.

Cross-ques. 13. May it not have been in the spring of 1854 that you left Cadiz?

Ans. 13. No, sir; it was not.

Cross-ques. 14. Were you engaged in any other business besides farming while there?

Ans. 14. Well, sir, we traded stock, sheep, and cattle.

Cross-ques. 15. Can you describe the double-shovel ploughs you had in your possession?

Ans. 15. No, sir; nothing more than my recollection that it was a double-shovel. I couldn't tell whether it was an iron beam or a wooden beam.

Cross ques. 16. Do you recollect the shape or construction of the beam?

Ans. 16. No, sir.

Cross-ques. 17. You do not know then whether the beam was straight or bent to form shovel standards?

Ans. 17. No, I don't remember.

Cross-ques. 18. Do you know who made these double-shovel ploughs?

Ans. 18. I don't remember the maker.

Cross-ques. 19. When in 1852 do you think these double-shovel ploughs were purchased by your brother and yourself?

Ans. 19. I don't know.

J. B. RYBURN.

(Here follows diagram marked page 514.)

515 *Defendants' exhibit—Mims patent.*

No. 2399.

The United States of America to all to whom these letters patent shall come:

Whereas Marshal and Seaborn J. Mims, Starkville, Mississippi, have alleged that they have invented a new and useful "improvement in the construction of plows for altering the set of the same," which they state has not been known or used before their application; have made oath that they are citizens of the United States; that they do verily believe that they are the original and first inventors or discoverers of the said improvement, and that the same hath not, to the best of their knowledge and belief, been previously known or used; have paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose;

These are therefore to grant, according to law, to the said Marshal and Seaborn J. Mims, their heirs, administrators, or assigns, for the term of fourteen years from the twenty-third day of December, one thousand eight hundred and forty-one, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Marshal and Seaborn J. Mims in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand at the city of Washington, this twenty-
516 third day of December, in the year of our Lord one thousand eight hundred and forty-one, and of the Independence of the United States of America the sixty-sixth.

[L. S.

DANIEL WEBSTER,
Secretary of State.

Countersigned and sealed with the seal of the Patent Office.

HENRY ELLSWORTH,
Commissioner of Patents.

No. 755.
Leggett
v.
Avery
page 514.

M. & S. J. Mims.

Plow,

No. 2,399. Patented Dec. 23. 1841.

Fig. 1.

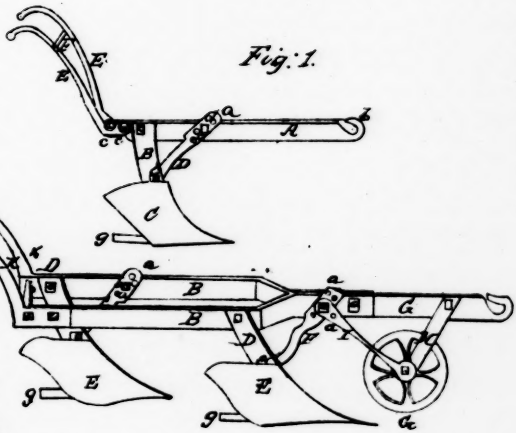


Fig. 2

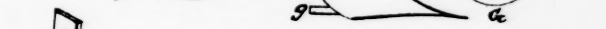


Fig. 3.

Fig. 4.

Fig. 5.

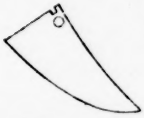


Fig. 6.

Fig. 8.

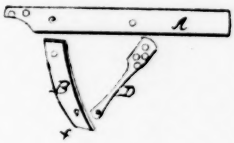


Fig. 7

The schedule referred to in these letters patent, and making part of the same.

To all whom it may concern:

Be it known that we, Marshal Mims and Seaborn J. Mims, of Starkville, in the county of Oktibbeha, and state of Mississippi, have invented a new and useful improvement in the plow, which as improved by us we denominate the single wrought iron plow; and we do hereby declare that the following is a full and exact description thereof:

This plow we form entirely of wrought iron, and it consists in general of six principal pieces, the nuts and screws for fastening the same together not being taken into the account.

In the accompanying drawing, Fig. 1 represents one of our improved single plows, and Fig. 2 a double plow constructed on the same principle as Fig. 1, but containing necessarily a larger number of pieces of metal. In Fig. 1, H is a bar of iron constituting the beam; this may be three feet four inches long, two inches and a half wide, and five eighths of an inch thick. At its fore end it has a hook (*b*) formed upon it, which answers all the purpose of a clevis. E E are two pieces constituting the handles, and these are attached to the beams by screws *c c*. These handles should be about three feet in length, their general width about an inch and a quarter, and their thickness about three-eighths of an inch. The handles are made to rise from the beam in the manner shown in the drawing, and are bent into the proper shape so as to be held and guided in a
517 convenient manner, the parts by which they are held being about two feet ten inches from the ground. At about nine inches from their outer ends they are stayed sixteen inches apart by an iron rod F. This rod may be three eighths of an inch in diameter and attached to the handles by screw-nuts. B is a bar of iron which constitutes the helve, hoe-handle, or stem of the mold-board. It may be sixteen inches long, two and a quarter inches wide, and five eighths of an inch thick. This piece is shown separately at B, Fig. 8. It has a hole near to its upper end, through which passes a bolt, *o*, by which it is secured to the beam at the distance of eight inches from its rear end. At its lower end, as at *f*, Fig. 8, it is so formed and curved as to adapt it to the receiving of a mold-board, as shown at *e*. This mold-board is in the form of that used in the dagon plow, and to the lower side of it we attach a bar, *g*, which runs back horizontally to the distance of six inches from the lower end of the turn or curve of said mold-board. This bar forms what may be called the heel. It may be two inches and a half wide and five-eighths of an inch thick. The helve B may be removed with its mold-board and may be replaced by another helve shown in Fig. 9, and marked B′. This latter helve differs from the former in the shape given to it at its lower end, *h*, by which it is adapted to the receiving of the various hoes, shovels, or mold-boards which are occasionally used in preparing the ground, such as the shovel-hoe (Fig. 3), the shovel-plow hoe (Fig. 4), the half shovel (Fig. 5), the bull-tongue or shooter (Fig. 6), or the sweep (Fig. 7), all of which are well known. These are to be furnished with bolt holes adapted to a bolt hole in the end (*h*) of the additional adjustable helve shown in Figs. 3 and 9.

D is what we denominate the adjustable brace. This consists of a bar of iron which may be seventeen inches long, an inch and a half wide, and a fourth of an inch thick. Through this we usually make five holes, although this number may be varied. Four of these holes, as *a a*, are in its upper end, distributed over a length of four or five inches, and through either of these and a hole in the beam a bolt (*d*) is to

518 pass, and another bolt (*c'*) through a hole in its lower end and through the fifth hole in the helve B, at the distance of about eight inches from its upper end. The brace D runs obliquely backwards and downwards and is attached to the beam at about eighteen inches from its forward end. By this arrangement the brace D may be raised or lowered at pleasure, and with it the mold-board *C*, or whatever mold-board, hoe, or other instrument may be attached to the helve. The depth of the furrow may consequently be regulated without applying the back-band so far back as to oppress the animal by which,the plow is drawn by bearing too heavily on its loins, the toe of the plow being made to point upward in any desired degree.

Our improvement in the adjustable brace and mold-board may be applied to a double wrought-iron plow as well as to that just described with a single mold-board. In Fig. 2 we have shown a double plow of this kind. In this plow the fore part of the beam C consists of a single bar with a hook (*c*) at its fore end. The hind part consists of two bars, each of which carries a mold-board (E E), attached to helves D D, and regulated by adjustable braces F F, which have holes for that purpose at *a a*. The handles, K K, rise from the respective side pieces B B, and the screw-nuts and bolts *e e* serve to confine the respective parts together. On the fore part of the double plow we use a wheel (G), which, as well as the mold-boards, may be regulated in its bearing by means of the arm H and the adjustable brace I.

Having thus fully described the nature of our improvements in the wrought-iron plow, what we claim therein as new and desire to secure by letters pattent is the particular manner in which we have arranged and combined the helve, brace, and mold-board, so as to adjust the position of the latter by means of the adjustable brace D and the bolt *o*, and thus to determine the depth of the furrow in the manner described, whether applied to a single or double plow, as set forth.

We also claim the adapting to the same plow any of the various kinds of hoes, shovels, or other instruments analogous in character and
519 occasionally used in the place of mold-boards, such adaptation being effected by means of the adjustable brace and helve herein described.

MARSHAL MIMS.
SEABORN J. MIMS.

Witnesses:
ALEXANDER W. HINES.
DAVID AMES.

(Here follows diagram, marked page 519.)

Defendants' exhibit, Edwards patent.

No. 4762.

The United States of America. To all to whom these letters patent shall come:

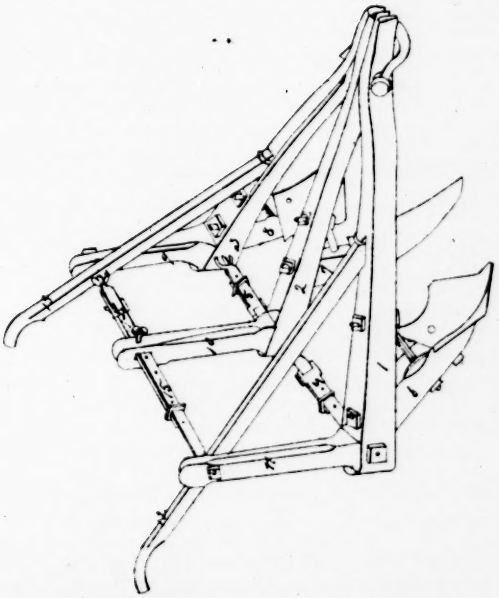
Whereas Isaac Edwards, Paoli, Indiana, has alleged that he has invented a new and useful improvement in cultivators, which he states has not been known or used before his application, has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement; and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United

No. 755.
Leggett
v.
Avery
} page 519

I. Edwards.

Cultivator.

Patented Sept. 19. 1846.



Witnesses
H. J. Thornton
A. McBeath

Inventor
Jno. Edwards

States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said Isaac Edwards, his heirs, administrators, or assigns, for the term of fourteen years from the nineteenth day of September, one thousand eight hundred and forty-six, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Isaac Edwards, in the schedule hereunto annexed, and is made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

520 Given under my hand at the City of Washington, this nineteenth day of September, in the year of our Lord one thousand eight hundred and forty six, and of the Independence of the United States of America the seventy-first.

[L. S.]

N. P. TRIST,
Acting Secretary of State.

Countersigned and sealed with the seal of the Patent Office.

HENRY H. SYLVESTER,
Acting Commissioner of Patents.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, Isaac Edwards, of the county of Orange, State of Indiana, have invented a new and improved corn plow and cultivator, to be called "Edwards' Improved Corn Plow and Cultivator," of which I declare the following to be a full, clear, and exact description of the construction and operation of the same, reference being had to the annexed drawing, which is a perspective view of said machine, viz, this plow is in form and general appearance not unlike the ordinary cultivator. It is constructed of three beams of oak timber (Figs. 1, 2, 3), two and a half inches square at the posterior end, and tapering to the front to one and one fourth by two and one half inches. These beams, shaved down so as to lie together closely, are fastened at the front end by a clevis, fitting loosely and hanging underneath and against the outf side beams, at the rear end with iron bars (Figs. 4, 5), on each end o which a hook is turned which rests in an iron eye inserted in the inside of the two outside beams and in both sides of the center beam. These bars consist of two parts or pieces; in one of them several holes are punched, into which the corresponding bar, beat into a point and turned, is inserted. These bars are held together by means of a permanent slide or band on the end of one of them, and an

521 iron band or clasp, which is movable. The purpose of these bars is to hold together the timbers of the plow, and their peculiar construction enables one to regulate the width of the plow. The beams should be about five feet long. Into the bottom of the beams, three or more wooden helves are inserted by means of mortise and tenon (figs. 6, 7, 8). These helves are supported additionally by an iron bolt passing through the beams and secured on the upper surface by a tap and screw, the lower end of which bolt passing out at the

back side of said helve at a point near half the distance from the beam to the lower end thereof, receives through an eye turned on the end of it another bolt passing through the helve and extending underneath the beams, and fastened by means of an iron bolt passing up through the beams in front of the helves. On the point of these helves, plows or cultivators of any model or construction may be worked. The helves should be about sixteen and one-half inches long. In the upper side of the beams, by means of mortises and tenons, three uprights (one in each beam) are inserted (figs. 9, 10, 11), which are nineteen inches long and sustain the handles (figs. 12, 13). The handles are fastened at the front end by an iron staple driven into the two outside beams. They project back on the inside of the two outside uprights, and are four feet long. The handles and uprights are secured together by means of iron bolts passing through them, both having a tap and screw on the outside and an eye turned on the inside of the handles. Into these eyes iron bars, as above described, with hooks are inserted, and serve to hold together and strengthen the machine. These bars (figs. 14, 15) differ from those above described only in this, that they are made to pass through an open mortise in the upper end of the middle upright with which they are connected only by means of an iron bolt (fig. 16) passing through the upright, and also through holes made in both of the bars, by which means they are held together firmly and the handles brought closer together or extended according to circumstances. The loose manner in which this plow is constructed makes it easy to take it apart and if desired to remove entirely the middle beam, operating only with the outside
522 ones. The plows may be so turned as to throw the earth either to or from the corn.

What I claim as my invention and desire to secure by letters patent is the manner of combining the hooks and eyes and clevis as above described, by which the sides of the plow may be elevated and raised out of the ground so as to conform to the inequalities and irregularities in the corn rows, without disturbing the other parts of the machine and without the necessity of raising the entire plow.

ISAAC EDWARDS.

Witnesses:
THOS. V. THORNTON.
A. M. BLACK.

Defendants' Exhibit Brown Patent.

No. 6511.

The United States of America. To all to whom these letters patent shall come:

Whereas George W. Brown, of Tylersville, Illinois, has alleged that he has invented a new and useful improvement in cultivators, which he states has not been known or used before his application; has made oath that he is a citizen of the United States, that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said George W.

No. 755
Leggett & Avery } page 523.

G. W. Brown,

Cultivator,

No. 6,511. Patented June 5, 1849.

Fig. 1.

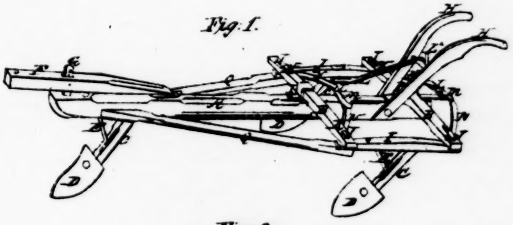


Fig. 2.

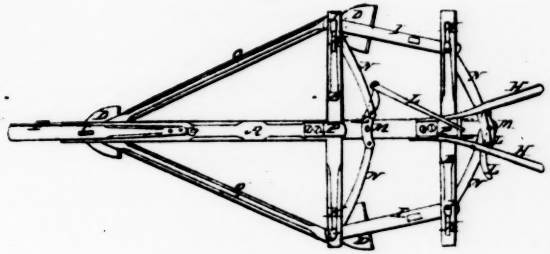
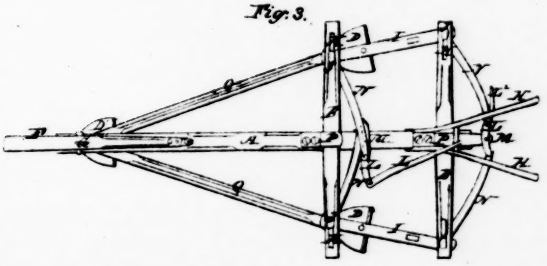


Fig. 3.



Brown, his heirs, administrators, or assigns, for the term of fourteen years from the fifth day of June, one thousand eight hundred and forty-nine, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a
523 description whereof is given in the words of the said George W. Brown in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this fifth day of June, in the year of our Lord one thousand eight hundred and forty-nine, and of the Independence of the United States of America the seventy-third.

[L. S.]

T. EWING,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

THOS. EWBANK,
Commissioner of Patents.

(Here follows diagram marked page 523.)

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, George W. Brown, of Tylersville, in the county of Warren, and State of Illinois, have invented a new and useful improvement in the cultivator, which is described as follows, reference being had to the annexed drawings of the same, making part of this specification.

Figure 1 is a perspective view of the cultivator. Figure 2 is a bird's eye view of the cultivator, showing the shovels adjusted for throwing the earth toward the rows of corn. Figure 3 is a bird's eye view of the cultivator, showing the shovels adjusted for throwing the earth from the rows of corn.

Similar letters in the several figures refer to corresponding parts.

The nature of my invention and improvement consists in so arranging the several parts of the cultivator that the shovels can be extended or closed for the purpose of plowing between wide and narrow
524 rows, or adjusted in regard to this angle of inclination so as to throw the earth toward or from the rows at pleasure by simply moving two short side adjustive beams to which the shovels are affixed, which is effected by means of a combination of levers and connecting links.

The main beam, A, cross beams, B, B, helves, C, C, C, shovels, D, D, D, braces, E, adjusting draft blocks, F, and segment gauge-bar, G, and handles, H, are made, arranged, and operated in the manner and for the purpose of other cultivators in use, and therefore need not be particularly described. I, I, are two short adjustive beams, into which the two rear helves, C, C, are secured. J, J, J, J, are connecting bolts that connect the short adjustive beams to the parallel transverse slotted beams.

K, K, K, K, are the oblong mortises made in the parallel transverse beams, near their extremities, for the bolts, J, to move in whilst adjusting the position of the shovels.

L, L, are levers for moving the ends of the adjustive beams toward or from the main beam in adjusting the same to the required positions of the shovels.

M, M, are the fulcra of said levers.

N, N, N, N, are the links that connect the cords of the adjustive beams I, I, to the ends of the levers—the connection being effected by means of the connecting bolts; J, L^1, is a jointed arm of the forward lever to be laid hold of by the operator in order to move the forward ends of the adjustive beams. L^2 is a handle or turned-up end of the rear lever for operating the rear end of the adjustive bars. P, P, are hasps for keeping the transverse slotted bars from rising from the beam whilst moving lengthwise of the beam, said bars being notched on the under side where they are fitted to the beam.

In closing and expanding the adjustive side bars, the transverse slotted bars must necessarily have some movement on the beam to prevent binding the parts.

Q, Q, are two oblique braces hinged to the forward part of the beam and united to the extremities of the transverse and adjustive bars
525 by the vertical conecting bolts, J, J^1. The transverse bars, B, are prevented from moving laterally by the shoulders next the notches in the under sides thereof.

OPERATION.

The operation of this cultivator is as follows: When it is desired to extend the shovels to their fullest extent and to bring the adjustive bars parallel with the beams, the levers must be moved on their fulcra till the connecting links and bars are in the positions represented in Figure 1.

Should the farmer desire to throw the earth from the rows of corn and toward the centre of the space between them, as will be necessary when the plants are young, he must bring the forward or jointed lever round to the position represented in Figure 3.

But should he desire to throw the earth toward the corn (when the plants become stronger) he must restore the pointed lever to its former position and bring the lever nearest to him round to the position represented in Figure 2. In order to lay off the land into three parallel rows at each drive across the field, for planting corn or other grain, the slotted bars, B B, must be removed and the two long bars, R R, put across the beam at right angles and bolted thereto and braced by oblique braces extending from the draft end of the beam to near the extremities of the said transverse bars, and nearly parallel with the oblique braces, Q Q. The short bars I, to which the helves and shovels are secured, are then to be bolted to the ends of said extended bars. A gauge is affixed to one of the bars for gauging the width of the rows. The cultivator being properly adjusted, the team, which is attached to an extended tongue, affixed to the beam, is driven across the field back and forth till it be laid out into parallel rows. The cultivator is then restored to the position represented in Figure 1 and used as a cultivator for operating between the rows of corn.

What I claim as my invention and desire to secure by letters patent, is the mode of adjusting the posioion of the shovels, D, so as to throw the earth from or toward the rows of corn, or to the right and
526 left at pleasure, by means of the before described combination of the levers L, links N, and adjustive bars I, with the parallel slotted bars B, and oblique hinged bars Q, as described.

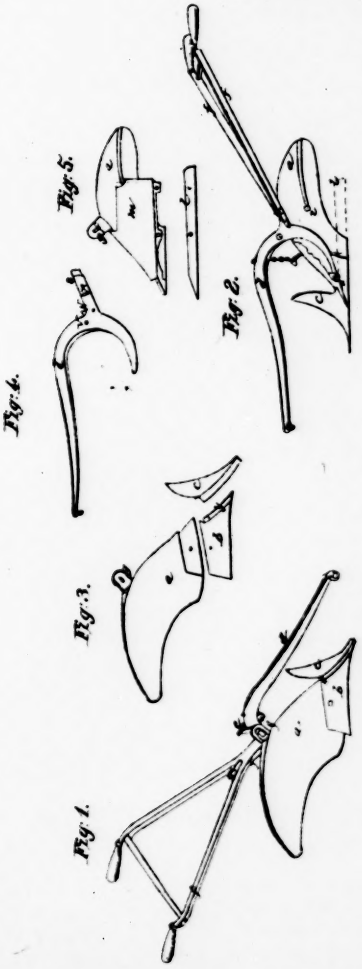
No. 755
Leggett & Avery
} page 527

S. Hall,

Plow,

No. 5529.

Patented Apr. 25, 1848



In testimony whereof I have hereunto signed my name before two subscribing witnesses this 25th day of July, 1848.

GEORGE W. BROWN.

Witnesses:
L. WASHINGTON, Jr.
WM. P. ELLIOTT.

Defendants' Exhibit Hall Patent.

No. 5529.

The United States of America. To all to whom these letters patent shall come:

Whereas Samuel Hall, Pittsburgh, Pennsylvania, has alleged that he has invented a new and useful improvement in plows, which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said Samuel Hall, his heirs, administrators, or assigns, for the term of fourteen years from the twenty-fifth day of April, one thousand eight hundred and forty-eight, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Samuel Hall in the schedule hereunto annexed, and is made part of these presents.

527 In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand at the city of Washington this twenty-fifth day of April, in the year of our Lord one thousand eight hundred and forty-eight, and of the Independence of the United States of America the seventy-second.

[L. S.] JAMES BUCHANAN,
Secretary of State.

Countersigned and sealed with the seal of the Patent Office.

EDMUND BURKE,
Commissioner of Patents.

(Here follows diagram marked page 527.)

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, Samuel Hall, of Pittsburgh, in the county of Alleghany and State of Pennsylvania, have invented a new and improved center draught iron plow; and I do hereby declare the following to be a full, clear, and exact description of the construction and operation thereof, reference being had to the accompanying drawings making a part of this specification, in which Fig. 1 is a perspective view; Fig.

2, a side elevation, with a part of the land side broken away, and Figs. 3, 4, and 5 are parts of the plow detached. Similar letters refer to corresponding parts in all the figures. The nature of my invention consists, first, in combining the beam to the body of the plow in such a manner that the draught shall be exerted at the center of resistance, whether the furrow be wide or narrow, deep or shallow, and also enabling the position of the beam to be so adjusted as to cause the plow to form a deep or shallow furrow without varying the base or shoe of the same from a horizontal position; and, second in the peculiar manner of uniting a wrought point and cutter to a wrought share without injury to the thinner parts thereof by the process of welding. *a* is the mold
528 board; *m* is the land side. These are cast in one piece with each other, and the cross supporting brace *t*. At the junction of the mold board and land side, and centrally between the two, a few inches above their lower edges, is cast a socket *p*. *g* is an ear cast with and projecting from the top of the mold board, having a slot *j* through the same. *d* is the metallic beam, either cast or wrought, terminating in a descending curve or hook at its rear end of the form represented in Figs. 2 and 4. The beam is secured to the body of the plow by inserting the point of the curve at its rear end into the socket *p*, and confining the beam to the ear *g* by means of the screw-bolt *h*, passing through the bolt hole *v* in the beam and the slot *j* in the ear. The slot *j* in the ear *g* affords sufficient play to the beam to allow its front end to be raised or lowered, and adjusted to deep or shallow furrows. The position of the beam is so adjusted as to cause the plow to form a wide or a narrow furrow by means of the wedge *e*. By inserting the wedge between the ear *g* and the beam in front or in the rear of the bolt *h*, it will readily be perceived that the front end of the beam may be thrown to the right or left, as may be desired, thereby causing a wide or narrow furrow to be formed by the plow. *s* is an arm projecting from the rear side of the curve of the beam, to which the handles *f f* are confined by means of the screw bolts *i i*, passing through the bolt hole *w* and the slot *n* in the arm. By means of the slot *n* in the arm *s*, the extremities of the handles can be preserved at a uniform height. As the position of the front end of the beam is raised or lowered, the position of the beams can also be adjusted to suit the different heights of persons guiding the plow. *l* is a shoe piece, secured to the base of the land side by means of bolts.

The wrought share and point and cutter I construct and unite as follows: The share *b*, and the point and cutter *c*, I forge respectively of the form represented in Fig. 3. I then place the base of the point and cutter upon the beveled edge *y* of the share, and secure the heel of the point to the share by means of the rivet *k* (Fig. 1). I then secure
529 the front portion of the point to the share by welding. A strong and perfect union of these parts is thus accomplished without burning or injuring their thin edges. The point and cutter cannot be perfectly secured to the share by the welding process alone, nor can they be united by the welding process without burning and injuring their thin edges.

The share, point, and cutter I shall sometimes cast in one piece from a pattern corresponding in form with the wrought share, point, and cutter herein described and represented, to be used in light soils.

It will readily be perceived that the beam can be so adjusted as to cause the plow to form a deep or a shallow furrow without varying the base of the plow from a horizontal position, which is a very important feature, as it prevents trembling and vibration, and insures a steady movement. The power is applied also at that point where the resist-

ance is the greatest, which is another very valuable feature that distinguishes my improved plow from all others.

Having thus fully described the construction and operation of my improved center-draught iron plow, what I claim therein as new, and desire to secure by letters patent, is:

1. The manner of securing the beam to the body of the plow by means of the curved termination of the rear end of the beam, the socket *p* between the mold-board and land side, the ear *g* projecting from the mold-board with the slot *j* in the same, and the screw-bolt *h*, the whole combined and operating substantially in the manner and for the purpose therein set forth.

2. I also claim, in combination with the foregoing described method of confining the beam to the body of the plow, the manner of giving a lateral adjustment to the front end of the beam by means of the wedge *e*, substantially as herein set forth.

3. I also claim, in combination with the method of securing the beam to the body of the plow, the manner of combining the handles with the beam by means of the projecting arm *s*, the aperture
530 *w*, and slot *u* in the same, and the screw bolts *i i*, combined and operating with the front end of the beam, substantially as herein set forth

4. I also claim the manner of forming and uniting the wrought share with the point and cutter, by the combination of riveting and welding, substantially in the manner and for the purpose herein set forth.

SAMUEL HALL.

Witnesses:
LEONARD S. JOHNS.
B. ROBINSON.

Defendants' Exhibit—Forman patent.

No. 8721.

The United States of America to all to whom these letters patent shall come:

Whereas James H. Forman, of Sharon, Alabama, has alleged that he has invented a new and useful improvement in shovel plows, which he states has not been known or used before his application; has made oath that he is a citizen of the United States, that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are therefere to grant, according to law, to the said James H. Forman, his heirs, administrators, or assigns, for the term of fourteen years from the tenth day of February, one thousand eight hundred and fifty-two, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Forman, in the schedule hereunto annexed, and is made part of these presents.

531 In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this tenth day of February, in the year of our Lord one thousand eight hundred and fifty-two, and of the Independence of the United States of America the seventy-sixth.

[L. S.] ALEX. H. H. STEWART,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.
THOS. EWBANK,
Commissioner of Patents.

(Here follows diagram, marked page 531.)

The schedule referred to in these letters patent, and making part of the same.

To all whom it may concern:

Be it known that I, J. H. Forman, of Sharon, county of Chambers, and State of Alabama, have invented a new and useful improvement in the construction of plows, and I do hereby declare the following to be a full and exact description of the same.

The principle of my plow is a subsoil plow for light, southern soils, which do not require the turning under system common among northern farmers, having a heavy sod to turn under and rot. It is therefore made light and adapted so as to be used with one or two horses; and with several varieties of adjustable shares, such as an "opener," "sweep," "medium share," "subsoil share," and "turning share," which may be attached and detached from and to the plow-stock at a minute's notice for the several kinds of plowing required, and thereby saving the expense of extra stocks for the several kinds of work required of the plow.

But to describe my plow more particularly, I will refer to the accompanying drawings, forming a part of this schedule, the same letters in the several drawings referring to the same parts wherever they occur.

532 Figure 1 is a perspective view of the plow, having the "subsoil share" attached thereto.

Fig. 2 is a view of the "turning-share."

Fig. 3 is a view of the "sweep."

Fig 4 is a view of the "medium share."

Fig. 5 is a view of the "subsoil-share."

Fig. 6 is a view of the "opener."

Letters, A, A, are the two handles of the plow-stock. These handles are made of iron, or other material, of any suitable size and form required; but I prefer iron as affording the greatest amount of strength to the least weight. To their lower ends, at the foot of the plow-stock, B, they are joined together so as to form a solid end to the plow-stock. At a little distance from the end they open somewhat like a clamp, for the purpose of passing the back end of the beam, C, between them. This beam is made of iron, and has its back end bent down somewhat in a hook-shape, and by means of a bolt, *d*, passing through the foot of the plow-stock, the end of the beam is clamped between the arms of the plow; at the commencement of the bend in the beam, there are several adjusting holes, *e*, *e*, *e*, through which a bolt, e^2, passes, to clamp the arms firmly to the sides of the beam. These adjusting holes are for the purpose of giving the required pitch to the plow, so as to plow deep or

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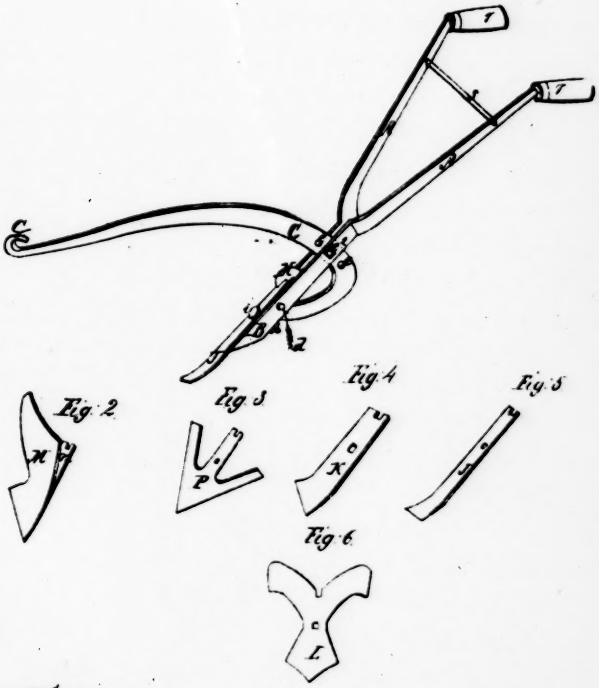
J. H. Forman.

Plow

No 8,721. Patented Feb. 10, 185



Witnesses;

John Smith
John Jones

Inventor;
J. H. Forman

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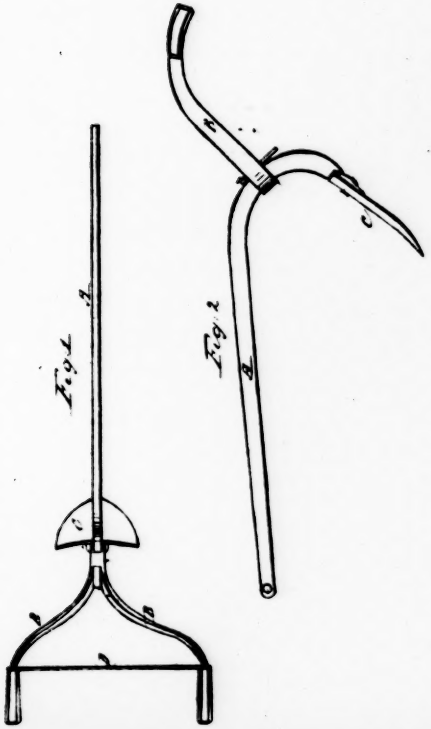
W. F. Pagett.

Shovel Plows.

No. 8,642. Patented Mar. 30, 1852.



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shallow, as may be desired. Letter G is a hook at the end of the beam for the purpose of connecting the plow to the horse. Letter H is a hook or catch, bolted or otherwise secured on the upper side of the plow-stock, for the purpose of holding the upper or back end of the plow-shares; and letter I is a bolt for passing through the shares and foot of plow-stock, to hold them firmly in contact.

Letter J is the subsoil-share, which is represented as bolted to the plow-stock. With the "subsoil-share," one good horse is able to break the land from six to eight inches deep, and with the "medium share," K, from four to five inches deep.

Letter L is the "opener," which, when attached to the plow-stock, is used for throwing up high ridges, or opening deep, wide furrows
533 where the land has been previously broken. Letter M is the "turning-share," used for turning the soil, when attached to the plow-stock, by means of the brace *n*, on the lower side of the share. Letter P is the "sweep," which is used as a general cultivator or grass-killer, which it does without injuring the roots of the growing crops.

Letters *r*, *r*, are two wooden handles to the arms of the plow-stock; and letter *s* is a brace between the arms of the plow-stock.

Having now described my invention, I will state what I claim and desire to secure by letters patent. What I claim, therefore, is:

The use of the fulcrum pin *d*, and adjusting arrangement of the pin e^2, in combination with the beam and stock of a plow, for the purpose of regulating the dip of the plow share, substantially as set forth.

JAMES H. FORMAN.

Witnesses:

ELLIOTT H. MUSE.

JAMES F. MITCHELL.

(Here follows diagram, marked page 533.)

Defendants' exhibit—Pagett patent.

No. 8842.

The United States of America to all whom these letters patent shall come:

Whereas Washington F. Pagett, of Stone Bridge, Va., has alleged that he has invented a new and useful improvement in shovel-plows, which he states has not been known or used before his application; has made oath that he is a citizen of the United States, that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

534 These are therefore to grant, according to law, to the said Washington F. Pagett, his heirs, administrators, or assigns, for the term of fourteen years from the thirtieth day of March, one thousand eight hundred and fifty-two, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the

said Pagett, in the schedule hereunto annexed and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand at the city of Washington, this thirtieth day of March, in the year of our Lord one thousand eight hundred and fifty-two, and of the Independence of the United States of America the seventy sixth.

[L. S.] ALEX'R H. H. STUART,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.
THOS. EWBANK,
Commissioner of Patents.

The schedule referred to in these letters patent and making part of the same.

Be it known that I, Washington F. Pagett, of the Stone Bridge, in the County of Clark, State of Virginia, have invented a new and useful improvement on the shovel-plow, and I do declare that the following is a full and exact description of the construction and operation of the same, reference being had to the annexed drawings, making a part of this specification, in which—

Fig. 1 is a top or plan view, and

Fig. 2 is an elevation.

A is the beam and sheath; B, B, is the handles; C is the shovel; D is the brace between the handles. The beam A is so bent or curved as to form or constitute both beam and sheath; that portion of
535 the sheath to which the shovel attaches is about one foot below, and inclines forward forming an angle of about forty-five degrees with the horizontal range of the beam. The shovel C is of the usual size, and attached by a screw-bolt or rivet; from the top of the shovel are two narrow projections which embrace the sheath and keep the shovel firm. The handles B, B are formed by bending double a bar of iron about six feet long, three inches wide, and three-eighths thick; in the fold about four inches from the center, a block of iron is riveted; thus a clip or loop is formed, through which the beam passes. The handles gradually open and taper from the block to the ends; pass through the ends of the brace D (which is about two feet and ten inches long), and receive hand-pieces of wood. The handles are kept fast by a key, between which key and the beam is a block curved to fit the convex edge of the beam, and may be so placed as to make the key fit at any point; by moving the handles up or down on the bend or curve of the beam and sheath the height will be accommodated to the stature of the plowman. On each side of the beam and sheath may be attached a shorter piece, corresponding in shape with the first mentioned beam and sheath, thus making three sheaths, which, with the addition of three small shovels, will answer the purpose of a cultivator; to make a double-shovel on this plan, the main beam and sheath, and the one applied, must diverge equally from the line of direction or front of the beam, a brace must pass from one to the other of these sheaths, about ten inches above the attachment of the shovels.

What I claim as my invention and desire to secure by letters patent, is the construction of the handles, and the principle or mode of shifting

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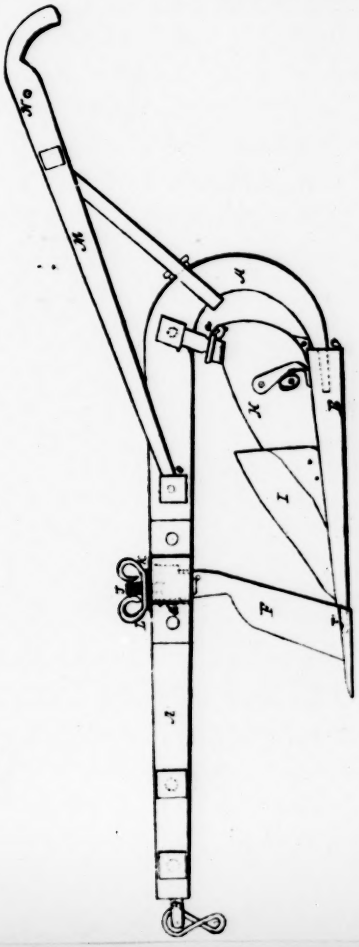
Harrison & Metcalf

Hill Side Plow.

No. 10. 107. Patented Oct. 11, 1853.



the same, as the same are herein fully described with their operation. The invention of the common shovel-plow is of course disclaimed.

WASHINGTON F. PAGETT.

Witnesses:
SAM'L P. BELL.
BYRON DENSMORE.

536 *Defendants' exhibit—Harrison-Metcalf patent*

No. 10107.

The United States of America to all to whom these letters patent shall come:

Whereas Nathan Harrison and John W. H. Metcalf, of Ridgeville, Va., have alleged that they have invented a new and useful improvement in hill-side plows, which they state has not been known or used before their application; have made oath that they are citizens of the United States; that they do verily believe that they are the original and first inventors or discoverers of the said improvement, and that the same hath not, to the best of their knowledge and belief, been previously known or used; have paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are therefore to grant according to law, to the said Nathan Harrison and John W. H. Metcalf, their heirs, administrators, or assigns for the term of fourteen years from the eleventh day of October, one thousand eight hundred and fifty-three, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Harrison and Metcalf, in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand at the city of Washington, this eleventh day of October, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the United States of America the seventy-eighth.

[L. S.] ROBERT McCLELLAND,
Secretary of the Interior.

537 Countersigned, and sealed with the seal of the Patent Office.
CHAS. MASON.
Commissioner of Patents.

(Here follows diagram marked page 537.)

The schedule referred to in these letters patent, and making part of the same.

To all whom it may concern:

Be it known that we, Nathan Harrison and John W. H. Metcalf, of Ridgeville, in the county of Hampshire and State of Virginia, have invented new and valuable improvements to the hill-side, or right and left plough, being, as we think, superior to any other (now in use) for steep

and sideling ground, and, in addition, works as well as almost any plow in use, on flat land.

The nature of our improvement or invention consists in its superior strength, durability, and simplicity, being less complicated, and not so liable to get out of order as other hill-side plows, and the construction being so simple that any country smith can make it; the entire plow being of wrought-iron except the mould-board, which is cast.

To enable others to make and use our invention, we will proceed to describe its construction and operation.

We make the beam A about 6 feet long, of a bar of iron from $\frac{3}{4}$ to $\frac{7}{8}$ thick, and from $2\frac{1}{2}$ to 4 inches wide (according to the strength of team, or depth we wish to plow), either for one, two, or three horses. The beam is nearly straight, say 4 feet from the clevis B, and then curves to near a half circle and forming a point, or pivot C, at the bottom, that fits in a socket in the heel end of the land-slide E. The coulter F is attached by a plate being riveted or bolted on the side of the beam, and forming a socket for the coulter F to pass through, say 3 inches by $\frac{1}{2}$ or $\frac{3}{4}$ inch. The coulter should be bent a little below the beam to make it range with the center of it. In the heel of the coulter is a socket F', for the point of the land-side to turn in as a pivot or hinge. The double share is screwed fast to the mould-board R, and both are bolted to the land-side. The mould-board may be made of such length and
538 width as may best suit the size required, and may be made to turn a wide or narrow furrow, by lengthening or shortening the iron that attaches the heel to the land-side, and also the hook *a*, that keeps the mould-board in place. The land-side, mould-board and share I, being all firmly attached, revolve together on the hinges or pivots formed by the end of the beam and the heel of the coulter. The coulter is keyed in the socket F', and has small pin-holes below the beam A, and a screw J, cut on the top of the coulter above the beam, with washer and tap L, to make and keep all firm and tight, and by which also the pitch of the plough can be arranged to make it run deep or shallow. The handles M, are bolted to the beam at one end, and are braced in the center by a rod N, extending down to the beam A, with a socket O to it that slips over the beam and is keyed; this socket may be raised or lowered on the curve of the beam to suit the desired height for the handles. The clevis B, is such as is common on side-hill plows.

We claim, curving downward and inward, the beam in the rear part, so as to cause it to support the rotary part of the plow, which it performs in combination with the standard in the manner and for the purposes set forth.

NATHAN HARRISON.
J. W. H. METCALF.

Witnesses:
N. KNYKENDALL,
HENRY TROUT.

No. 17777.

The United States of America to all whom to these letters patents shall come:

Whereas, George G. Black, of Crossinville, Ohio, has alleged that he has invented a new and useful improvement in cultivator plows, which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily

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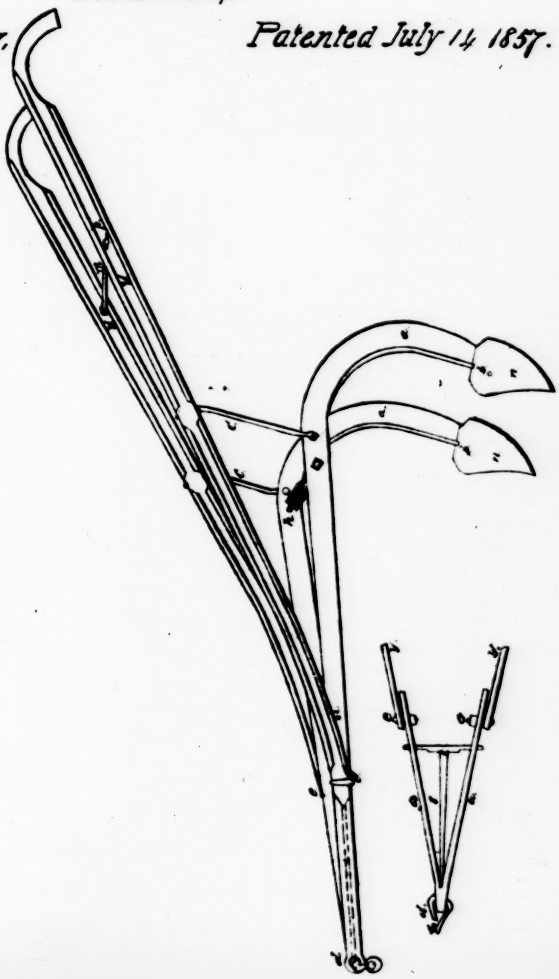
& Avery
page 539.

G. G. Black.

Cultivators.

No. 17,777. Patented July 14 1857.



539 believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of patents signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said George G. Black, his heirs, administrators, or assigns, for the term of fourteen years from the fourteenth day of July, one thousand eight hundred and fifty-seven, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Black in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this fourteenth day of July, in the year of our Lord one thousand eight hundred and fifty-seven, and of the Independence of the United States of America the eighty-second.

[L. S.]

JACOB THOMPSON,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

C. MASON,
Commissioner of Patents.

(Here follows diagram marked page 539.)

The schedule referred to in these letters patent, and making part of the same.

To all whom it may concern:

Be it known that I, George G. Black, of the town of Crossinville, in the county of Perry and State of Ohio, have invented a new and improved double shovel plow; and I do hereby declare that the fol-
540 lowing is a full and exact description thereof, reference being had to the accompanying drawings and to the letters of reference marked thereon.

The nature of my invention and improvements in double plows, with two beams joined at the clevis and made to be adjusted to rows of crops of different widths, consists in the arrangement of a rod between the beams to prevent the horse or animal drawing the plow from getting his foot or legs wedged in between the beams of the plow, said rod being provided with a cross-bar to support it, upon which the beams vibrate when the width or space between the plow is changed.

In the accompanying drawings, *a a* are the beams joined together at the clevis *d*, and also joined to the rod *l*, placed between them to prevent the animals which draw the plow from getting their legs or feet wedged in between the beams. The rear end of this rod *l* is supported by the cross-bar *t*, which is fastened to it with its ends passing through the beams *a a*, which traverse upon it when the distance between the beams is changed by the link screw *h*, arranged between the beams as represented, to set and adjust the plows a proper distance apart to suit the rows of crops being cultivated. The beams *a a* are bent toward their rear ends, and have the shovels or scrapers *n n* fastened to them

by the bolts *b b*, as shown in the drawing, which shovels may be made in such form as will adapt them to the crops or ground to be cultivated.

The fore end of the handles *y y* are fastened to the beams by bolts *e e*, and they are supported by the braces *c c*, which connect them to the rear of the beams, as shown in the drawing. These handles are adjusted the required distance apart by the bar *m*, which has a shoulder and pivot at one end, which is secured to the handle so as to turn freely in it by the pin *p*. The opposite end of the bar has a male screw on it, fitted to a female screw in the handle, so that by turning the bar *m*, the handles are traversed and set nearer together or further apart, as desired. By turning the link screw *h* and the bar *m*, the scrapers
541 *n n* may be adjusted to throw the required quantity of earth about the growing crop being cultivated, the beams traversing on the rod *t*, as before mentioned.

I believe I have described and represented my improvements in double plows so as to enable any person skilled in the art to make and use them. I will now state what I desire to secure by letters patent, to wit:

What I claim as my invention in double plows with two beams joined at the clevis, and made to be adjusted to rows of crops of different widths, is the rod *l*, arranged between the beams and provided with a cross bar *t*, upon which the beams can vibrate when the plows are adjusted as described.

GEORGE G. BLACK.

Witnesses:
ALFRED MCVEIGH.
JESSE MCVEIGH.

(Here follows diagram marked page 541.)

Defendants' Exhibit Brown Patent.

No. 11929.

The United States of America, to all to whom these letters patent shall come:

Whereas Job Brown, of Lawn Ridge, Illinois, has alleged that he has invented a new and useful improvement in cultivators, which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said Job Brown, his heirs, administrators, or assigns, for the term of fourteen years
542 from the fourteenth day of November, one thousand eight hundred and fifty-four, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Brown in the schedule hereunto annexed, and is made part of these presents.

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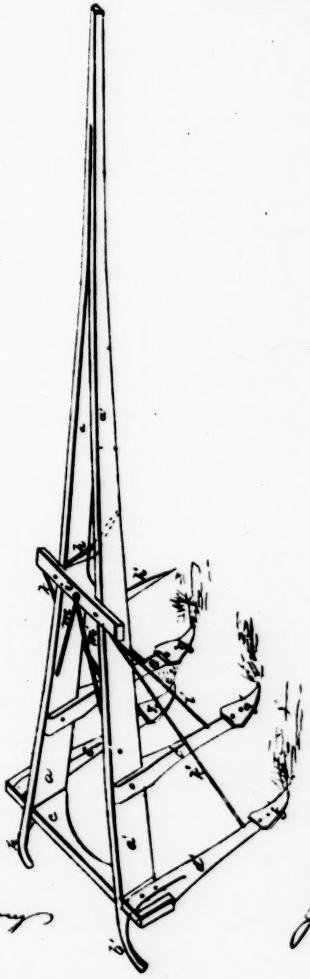
J. Brown.

Cultivator.

No. 11,929. Patented Nov. 14. 1854.



Witnesses
Charles Stine
Jno E. Devy

Inventor
Jol. Brown

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand at the city of Washington, this fourteenth day of November, in the year of our Lord one thousand eight hundred and fifty-four, and of the Independence of the United States of America the seventy ninth.

[SEAL.] ROBERT McCLELLAND,
Secretary of the Interior.

Countersigned, and sealed with the seal of the Patent Office.

C. MASON,
Commissioner of Patents.

The schedule referred to in these letters patent, and making part of the same.

To all whom it may concern:

Be it known that I, Job Brown, of Lawn Ridge, county of Marshall, and State of Illinois, have invented a new and useful improvement in cultivators, and I do hereby declare that the following is a full and exact description thereof:

The nature of my invention consists in forming the side frames of the cultivator into a triangular shape, the forward ends of the frame being joined so as to compose a tongue, to which the animals are attached, and the after ends of the same terminating in handles, by which the operator controls the implement.

To enable others skilled in the art to make and use my invention, I will proceed to describe its construction and operation, reference being had to the annexed drawing forming a part of this specification, in which

543 Figure 1 is a perspective view of my improvement. Similar letters refer to like parts: a, a^1, side frame, b, b^1, handles, c, end piece, d, d^1, e, e^1, standards, f, f^1, g, g^1, plowshares, h, h^1, short standards, i, cross-piece, k, k^1, l, l^1, standard braces, m, m^1, frame braces.

The two pieces, a and a^1, of side frame, a, a^1, unite at the forward end of the machine into one piece, and form a tongue to which the animals are attached; the whiffletrees being fastened to the cross piece, i. The after ends of the frame pieces a, a^1 terminate in handles b, b^1, by means of which the operator guides and controls the implement.

The end-piece c separates the handles and gives additional strength to the frame. The standards d, d^1 are attached to the end piece c; they are steadied by the braces k, k^1, which extend from the lower parts of the standards to the cross piece i. The standards e, e^1 are attached to the frame a, a^1, being steadied by the braces l, l^1. The cross piece i is held in its place by the braces m, m^1. All the standards are furnished with plow-shares except the short standards, indicated respectively by f, f^1, g, g^1. The standard d, being attached to the end-piece c, and the standard e, being placed further inward and attached to the frame a, space is left between the plows so that they will cut on both sides of the drill of plants, but not injure the plants themselves. The two other plow-shares are arranged in the same manner, so that two drills may be cultivated each on both sides at the same time. The short standards h, h turn the leaning stalks into the row. The standards are intended to be long enough to elevate the frame so much that the tongues shall be of suitable height for the animals employed in drawing the machine.

By having the frame and tongue all in one piece, stiffness and stability

is given to the implement, and the operator has a thorough control over the same. By separating the after portion of the frame into angular shape, and having the plow-shares attached to the end-piece and frame, the central portions of the implement are left entirely open, which enables the operator to observe with certainty the action of the plow-shares, and thus to do skillful work.

544 My machine possesses the further advantages of great simplicity and cheapness in construction.

Having thus described my invention, I claim the combination of the angular shaped frame a, a^1 (having the two pieces a and a^1 united at their forward ends into a tongue), with the long standards d, d^1, e, e^1, and short standards h, h^1, in the manner and for the purposes herein set forth.

JOB BROWN.

Witnesses:
CHARLES STONE.
JOHN E. SEVRY.

In the matter of the application of Matthew G. Slemmons for the extension of letters patent for improvement in plows, granted October 9, 1860, No. 30357, and reissued June 22, 1869, No. 3514.

The claims of the reissued patent for which an extension is asked are:

"1. Two converging beams, A A, each one of which has a shovel standard, A^1, formed by bending its rear end substantially as described.

"2. The converging beams A A, connected together and constructed with curved shovel standards A^1 A^1 upon them, substantially as described.

"3. The union of the front end of plow beams which have their rear ends bent to form shovel-standards, by means of a clevis, or devices, by which the team are hitched to the implement substantially as described.

"4. The converging plow beams A A, having shovel standards A^1 A^1 formed on them, in combination with handles F F, and handle-supporting braces E E, substantially as described.

"5. In combination with the foregoing, also the manner, substantially as described, of adjusting the handles F, F, and securing them to the beams at any desired angle.

545 "6. Constructing of one piece of metal a plow-beam, A, and a curved shovel-standard, A^1, with a shoulder, d, formed on the latter substantially as described."

Cultivators provided with converging beams are shown in the patent of I. Edwards, September 19, 1846. Hence the validity of the first and second claims of this patent are entirely dependent upon the peculiar shape of the plow-beams. A curved plow-beam with shovel-standards of identically the same form as Slemmons' is shown in the patent of W. F. Pagett, March 30, 1852; nothing of a patentable nature can be accredited to the above mentioned claims, therefore, in which there is only the substitution of one well-known beam in place of another.

The subject matter of the third claim was unlawfully interpolated into this reissued patent, as the drawings and model in the original case fail to show the front ends of the plow-beams secured by a clevis or any other device; on the contrary, they were originally made solid at their juncture.

The fourth claim, as drawn, should not have been allowed, as converging plow-beams with shovel standards were old, and the patent of

Isaac Edwards, September 19, 1846, has plow-handles and supporting-braces combined with angular plow-beams.

The fifth claim, although of a limited character, embraces subject-matter which was novel when patented.

In view of the patent of W. F. Pagett, March 30, 1852, the sixth claim depends for its support on the shoulder *d*, formed on the standard; but a shovel combined with its standard in exactly the same manner may be seen in the patented model of Mims, December 23, 1841. This claim must, therefore, be objected to.

There is set forth, in the third and fourth claims of this reissued patent, subject matter of limited value and importance, which might receive protection by properly restricted claims.

As the inventor will receive the sum of two thousand dollars for the extended term, I think this amount will fairly compensate him for the limited improvements found in the original patent.

546 The extension will be granted provided applicant files a disclaimer to the first, second, third, fourth, and sixth claims.

J. M. THACHER,
Acting Commissioner.

OCTOBER 5, 1874.

In the matter of the application of Matthew G. Slemmons for extension of reissued letters patent No. 3514, for improved plow, granted June 22, 1869.

Hon. COMMISSIONER OF PATENTS:

SIR: In the above matter I would respectfully state that I am the owner of the whole right and title to the said letters patent No. 3514, for improved plow, and I do not desire to hold by virtue of said letters patent any of that part of the invention as claimed in claims one (1), two (2), three (3), four (4), and six (6). I do, therefore, hereby disclaim all that part of the said invention covered by the said letters patent that is embraced in the said above-enumerated claims. That is to say, in the following words, viz:

1. Two converging beams A, A, each one of which has a shovel-standard, A^1, formed by bending its rear end substantially as described.

2. Converging beams, A, A, connected together and constructed with curved shovel-standards A^1, A^1 upon them substantially as described.

3. The union of the front ends of plow beams which have their rear ends bent to form shovel-standards by means of a clevis or device by which the team are hitched to the implement, substantially as described.

4. The converging plow beams, A A having shovel-standards A^1, A^1 formed on them in combination with handles F, F and handle-supporting braces E, E, substantially as described.

6. Constructing of one piece of metal a plow-beam, A, and a
547 curved shovel-standard, A^1, with a shoulder, *d*, formed on the latter, substantially as described. Reserving right to reissue in proper form.

Respectfully, etc.,

MATTHEW G. SLEMMONS.
By LEGGETT & LEGGETT,
His Attorneys.

Witnesses:
ACLAND BOYLE.
R. M. BARR.

WASHINGTON, D. C., *October* 5, 1874.

Defendants' Exhibit Complainants' Letter.

[M. D. Leggett, L. L. Leggett, W. W. Leggett; M. D. Leggett & Co., Counsellors at law in patent causes, Standard Block.],

CLEVELAND, O., *July* 28, 1876.

B. F. AVERY & SONS, *Louisville, Ky.:*

GENTLEMEN: Brown Manufacturing Co., and Brown Manly Plow Co., jointly possess exclusive right to manufacturing in Ohio, Indiana, Kentucky, Tennessee, Virginia, and West Virginia, and are by contract jointly interested in the receipts from other quarters, and by this letter we authorize them to make terms of settlement with you, since the suit against you was brought substantially in their interest.

Very truly, etc.,

M. D. LEGGETT & CO.,
For LEGGETT & LEGGETT.

548 STATE OF OHIO,
County of Harrison, ss:

John Alexander, being first duly sworn, deposes and says that he is a resident of Uhrichsville, Ohio; that he is thirty-eight years old, and that until about two years ago he resided on his father's farm in Harrison County, Ohio, ten miles from Smyrna, Ohio; that some time between the years 1848 and 1851 his father purchased and used a double-shovel iron-beam plow with wooden handles, with iron beams, connected at the clevis by welding; a hole through the beams through which a ring passed served for the attachment of the draft; that the beams diverged from the clevis, and were bent downward to form standards for the shovels, substantially as shown in the drawing marked Bendure Drawing; that in the spring of 1852 affiant used said plow to plow potatoes in the orchard near his father's house; that in the spring of 1850 or 1851, James Kirkpatrick was married and moved onto the farm of the father of affiant and used said plow to plow corn.

JOHN W. J. ALEXANDER.

(Here follows diagram marked page 548.)

549 Sworn to before me and subscribed in my presence this 9th day of January, A. D. 1877.

[L. S.] MILTON HARVEY,
Notary Public in and for the above-named State and County.

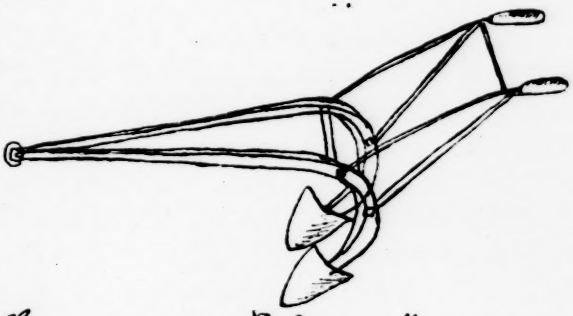
United States circuit court, district of Kentucky. In equity.

WELLS W. LEGGETT ET AL.
vs.
B. F. AVERY ET AL. } No. 3016.

An amended answer in this cause having been prepared, signed, and sworn to and forwarded to be filed, it is expressly agreed by counsel that these depositions of James S. Gilmore, Joseph B. Danforth, jr., shall be applicable to and used in support of any issues arising under said amended answer, without regard to whether they are taken before or after the filing of said answer.

HATCH & PARKINSON,
Solicitors for Defendants.
M. D. LEGGETT & CO.,
Counsel for Complainants.

No. 755
Leggett
v.
Avery
} Page 548



"Bendure Plow"

W. Harvey
Notary Public

United States circuit court, district of Kentucky.

WELLS W. LEGGETT ET AL.
vs.
B. F. AVERY ET AL.

Examination of witnesses on behalf of the respondents in the above-entitled cause, according to annexed notice, before Charles W. O'Neil, notary public, January 31, 1877.

Present, Arthur Stem, representing Hatch & Parkinson, solicitors for respondents.

Wm. Behrens, representing M. D. Leggett & Co., counsel for complainants.

Testimony of James S. Gilmore.

JAMES S. GILMORE, a witness produced on behalf of the re-
550 spondents, being first duly sworn, testifies as follows in answer to interrogatories propounded to him by Mr. Stem, for respondents:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is James S. Gilmore; age, forty-three; residence, Aledo, Mercer County, Illinois; occupation, blacksmithing and machinist.

Ques. 2. Have you always lived in Illinois? If not, where did you live before coming to Illinois?

Ans. No, sir; I have not always lived in Illinois. Before coming to Illinois, I lived in Smyrna, Harrison County, Ohio.

Ques. 3. When did you leave Smyrna?

Ans. The 15th day of November, A. D. 1853.

Ques. 4. Have you ever been back there to reside?

Ans. No, sir.

Ques. 5. In what business were you engaged at Smyrna, Ohio?

Ans. My general business was blacksmithing.

Ques. 6. With whom were you associated in business?

Ans. With my father, Francis Gilmore, or "Frank," as he was usually called.

Ques. 7. How do you fix the date at which you left Smyrna?

Ans. From memory. I recollect our day of leaving there—November 15, 1853.

Ques. 8. Are you perfectly clear and positive of this date?

Ans. I certainly am as much so as I could be of any other circumstance.

Ques. 9. Can you swear positively to the date?

Ans. Yes, sir.

Ques. 10. Do you remember any events that occurred at the time of your leaving that serve to fix the date clearly in your memory? If so, state them.

Ans. I recollect one a few evenings before, and that was being at a singing-school; that was just a few evenings before I left. I am perfectly positive of the date, but cannot just now fix it by any other circumstance.

551 Ques. 11. What was your work included under the general description of "blacksmithing?"

Ans. "Blacksmithing" consists of a variety of work; for instance,

horse shoeing, wagon and buggy ironing, plow-work and general farm work, and edge-tool making; that was a business that we followed a good deal; all of which kinds of work we did at Smyrna.

Ques. 12. What did you do in "plow work?"

Ans. Making new wrought iron shares laid with steel, and relaying old shares, sharpening, and repointing old plows. We made new plows, that is, one-horse plows, or cultivators; some termed them double shovel plows. We made two kinds of plows, both forked beams, both wood and iron; they were both for the same purpose—to till the ground. I also made a two-horse forked beam plow; "straddle the row," some called it.

Ques. 13. Please describe more fully the wooden and iron double-shovel plows of which you speak.

Ans. The wooden plows were double shovel plows with wooden beams and wooden standards; the beam fastened together in front and about from twelve to fourteen inches apart at the back. There was a tenon-block between the beams which kept them apart; and there was a ring between the upper end of the standards to attach handles. The iron plows were made with forked beams, which curved to the ground to attach the shovel; the beams were welded together at the front end at the place of hitching, with an inserted hole through the front end of the beams for the purpose of hitching the horse to either with a link or an open ring.

(Counsel for defendants here offers in evidence a sketch and marks the same Defendants' Exhibit Gilmore Plow.)

Here follows diagram marked page 551.

Ques. 14. State if the plows made by you were like the one shown in the sketch Defendants' Exhibit Gilmore Plow, or, if they differed, in what respect.

Ans. In substance that is the plow. The shoulder iron B was made with a nut on each end; that was to hold the bars or beams at a proper width and to fasten the handles. I sometimes used an angle brace to hold the beams apart and to attach the handles. The shovels differed somewhat. We made what we called the hog-back shovel, rounded off and turned up at the pointed end, and bolted to the standards. I usually used, also, a side brace for staying the side motion, which consisted of an iron brace rod extending from the handles at C to the beams at D, and bolted on to the end of the shoulder iron B.

552

Ques. 15. Did the plow made by you in Philadelphia County differ in any other respect from the Exhibit Gilmore Plow, or not?

Ans. No, sir.

Ques. 16. Was there any part of the plows made of wood except the gills or handles?

Ans. No, sir; that is, of the iron beam plows.

Ques. 17. What kind of iron did you use for the beams?

Ans. Wrought-iron bars; size, one inch and a half by five-eighths of an inch, and lightened or tapered to front.

Ques. 18. When did you first make and sell iron double shovel plows, like those you have described, with the curved beams diverging from the clevis and bent downwards to form standards for the shovels?

Ans. My efforts commenced in A. D. 1847, and in A. D. 1848 I sold plows, and have, from that time up to the present, promiscuously through the time.

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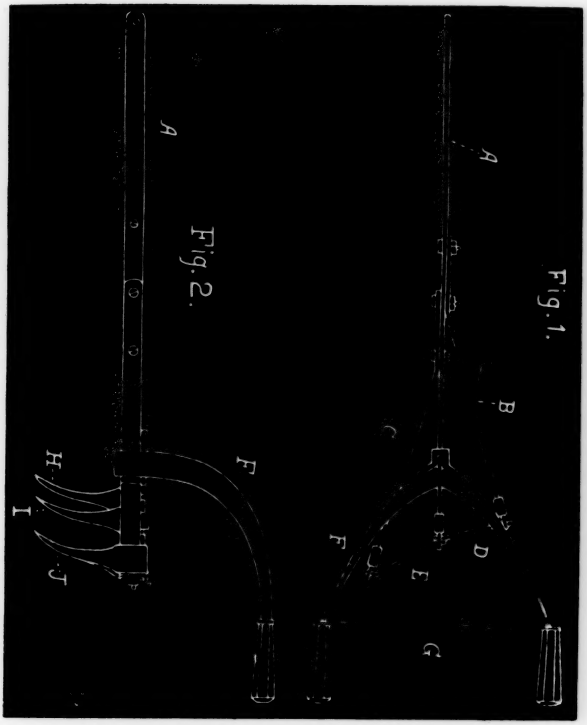

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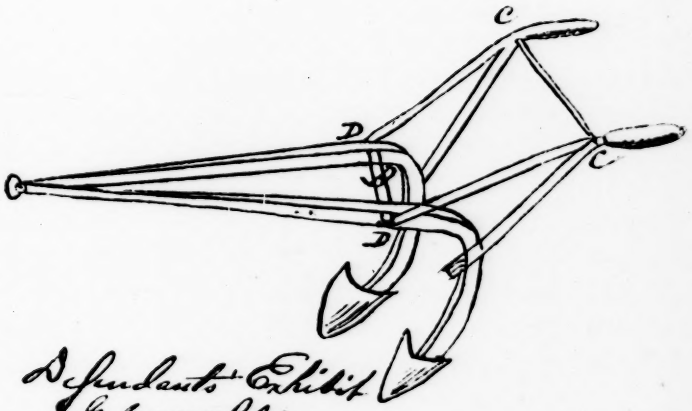

Defendants' Exhibit
Gilmore plow "

Chas. O. O'Neil
Notary Public

Ques. 19. Did you or did you not make and sell plows in each of the years between A. D. 1848 and A. D. 1853, when you left Smyrna?

Ans. Yes, sir.

Ques. 20. How many plows do you suppose you made and sold before leaving Smyrna?

Ans. I think I would be safe in saying twenty-five.

Ques. 21. Have you any way of fixing positively the number?

Ans. No, sir; only from my memory. I have nothing by which I can fix the exact number.

553 Ques. 22. Can you or not swear positively that you made and sold a number of these plows in each of the years A. D. 1848, A. D. 1849, A. D. 1850, A. D. 1851, and A. D. 1852?

Ans. I am positive that I made and sold one or more plows in each of those years. I may have made and sold more in some of those years than in others. I can swear positively to that.

Ques. 24. Can you remember the names of any parties to whom you sold any of these plows? If so, give them.

Ans. I recollect distinctly the name of one now—John C. Phipps, senior, of Smyrna, Ohio.

Ques. 25. Can you remember the names of any of your neighbors, those who would be likely to remember whether you made these plows or not? If so, name them.

(Objected to by counsel for complainants as immaterial.)

Ans. Well, I would refer you to Elias J. Phipps, John Vandure or Bandure, I don't know how it was spelled; John Fennessey; if he is there he must be an old man; Wm. Rummons. I think likely these are all still at Smyrna, and that they would know something about it.

Ques. 26. Did you ever sell plows such as you have described, which were made elsewhere?

Ans. Yes, sir.

Ques. 27. Where were they made?

Ans. At a place called Hole-in-the-Ground. I think in Belmont County, Ohio.

Ques. 28. Do you know by whom these plows were made?

Ans. I do not.

Ques. 29. How came you to sell them?

(Objected to by counsel for complainants as irrelevant.)

Ans. They were fetched to my place for sale.

Ques. 30. Do you include these in the twenty-five that you testified that you thought you had made and sold yourself?

Ans. No, sir.

Ques. 31. Describe your trip from Smyrna to Illinois.

Ans. We went from Smyrna to Cambridge, Ohio, in wagons; at Cambridge we took the railroad to Newark, Ohio; from Newark, Ohio,

554 to Monroeville; from there to Chicago; from Chicago to Sheffield, Illinois, which was as far as the railroad was finished; and at Sheffield took stage for Rock Island, Illinois.

Ques. 32. Did you come direct from Smyrna to Rock Island?

Ans. Yes, sir, with the exception of four nights' stop at Peru.

Ques. 33. You came to Rock Island then, did you, before the railroad was finished between Sheffield and Rock Island?

Ans. Yes, sir.

Ques. 34. Do you remember when the railroad was finished to Rock Island?

(Objected to as immaterial by counsel for complainants.)

Ans. I think it was finished in the latter part of the winter of A. D. 1854—A. D. 1855.

Ques. 35. Do you mean the winter immediately following the November in which you came here?

Ans. My first impression was that it was a year after I came here, but after giving it some thought I think it was the winter following my arrival. It is a question I have not thought of for a long time. I think it was but a short time after I came here; my first impression was that it was a year after.

Ques. 36. Can you swear positively that you made and sold these plows every year for four or five years before you left Ohio, on that occasion? I mean the double-shovel iron-beam plows.

Ans. I can.

Ques. 37. Did you use any peculiar tools, not usually found in a blacksmith shop, for making these plows; if so, what?

(Objected to by complainants' counsel as immaterial and irrelevant.)

Ans. I had a pattern by which I shaped the arch or curve, a piece of curved iron by which I measured the curve of the beam, making the curves all alike; it was shaped like the rear end of the beam. I
555 used two shapes, one that was more abrupt—had more of a quick turn—the other was more of a circle.

Ques. 36½. Please state what became of said curve and pattern.

Ans. I brought it with me to Illinois, with my shop tools; the pattern was cut or spoiled two years ago by an employee of mine named Hughes.

Cross-examination:

Cross-int. 38. State, if you please, the day, month and year when you were born.

Ans. The 31st day of January, A. D. 1834.

Cross-int. 39. How long did you attend school?

Ans. I quit school at twelve.

Cross-int. 40. What did you do after that?

Ans. I worked in shops.

Cross-int. 41. When did you commence to work in your father's shop?

Ans. I stopped school at twelve years old to go to work in the shop of my father.

Cross-int. 42. Were you ever in partnership with him?

Ans. Not in Ohio.

Cross-int. 43. What did you work at when you entered your father's shop, during the first year?

Ans. I took charge of a forge.

Cross-int. 44. What was your father working at during the first year that you were in his shop? Did he make any double-shovel plows?

Ans. We commenced making them in A. D. 1848; my discoveries as to plows were made sooner than that.

Cross-int. 45. Did your father ever make any double-shovel plows either of iron or of wood?

Ans. I could not say that he ever did the labor part.

Cross-int. 46. Did he direct it to be done?

Ans. He consented; I did the directing in this matter.

Cross-int. 47. Then your father, as I understand you, never made nor directed to be made any double-shovel plows of any description?

(Objected to by defendants' counsel as irrelevant and incompetent.)

556 Ans. No. I could not say that he did; I had charge of the shop, so far as my work was concerned, and did what work I pleased.

Cross-int. 48. For how many years did you make wooden double-shovel plows before you commenced to construct iron ones?

Ans. About the same time, as near as I can recollect.

Cross-int. 49. Then you do not know, do you, whether you made a wooden beam or an iron beam double-shovel plow first?

(Objected to by defendants' counsel as immaterial and irrelevant.)

Ans. I think we made wooden beams first; made both promiscuously.

Cross-int. 50. What do you mean by using the word "we"? Do you mean that your father assisted either in directing to be made or making double shovel plows?

Ans. The reason why I used the word "we" there, is because the shops were father's. I have no recollection of father's directing the management of these plows or making them himself.

Cross-int. 51. Was your father selling any double-shovel plows when you entered the shop?

Ans. I do not recollect.

Cross-int. 52. When did you first see a wooden double shovel plow?

Ans. I think I was about fourteen years old when I first saw one.

Cross-int. 53. Where did you see it?

Ans. In Smyrna, at my father's shop.

Cross-int. 54. Of your own construction or constructed by others?

Ans. As to the wooden plow, my recollection is that I had seen somewhere a wooden double-shovel; the first that I ever saw was not mine.

Cross-int. 55 How many years or how long a time afterwards was it when you began to make your first wooden double-shovel plow?

557 Ans. My impression is it was not long; not to exceed two or three months. I saw it at work, and I went to work and made one soon after.

Cross-int. 56. How long after you made that plow was it before it was sold, if you recollect?

Ans. I don't know what became of that plow.

Cross-int. 57. Did you make more wooden double-shovel plows than iron double-shovel plows?

(Objected to by counsel for defendants as immaterial and irrelevant.)

Ans. I think not.

Cross-int. 58. You are not certain as to this, are you?

Ans. That would be my recollection. I don't think there was any more made of the wooden plows than of the iron.

Cross-int. 59. When you made your first wooden double-shovel plow, did you take for a model the wooden shovel plow that you had seen of others' make, or did you improve thereon, if you recollect?

(Same objection by defendants' counsel.)

Ans. I never took any dimensions; the first one that I saw did not run right, and I went and built one that did run right; it differed in formation.

Cross-int. 60. How old were you when you moved away from Smyrna?

Ans. Nineteen.

Cross-int. 61. How old were you when you made the first wooden double-shovel plow?

Ans. About fourteen years old.

Cross-int. 62. What induced you to make a double-shovel plow of iron?

Ans. My first knowledge was an invention in small form, about one foot long; that was the forked iron beams made of nail rod, much the

same as I have described here; that was my first invention. I used two of these forked iron beams in small form; I had a little cast-wheel wagon, to the axle of which I attached these forked iron beams, and plowed with it in the garden as boys play, and cultivating with it too. I thought it was a nice thing. After this wooden double-shovel
558 plow was made, I went to work and made a larger iron plow, the same as the little one I used in the garden only on a larger scale, four feet to one, and made it as a one-horse plow. From that on I made others. The handles at first were not like the handles in defendants' Exhibit Gilmore Plow; I adopted those handles afterward. What induced me to make the plow of iron was that the iron plow would not clog and choke with trash.

Cross-int. 63. How did you find out that a wooden double-shovel plow would clog and choke?

Ans. By observation; seeing it work.

Cross-int. 64. Did you use or try them yourself?

Ans. Yes, sir.

Cross-int. 65. How many times, and how many such plows did you use?

Ans. I handled the first two plows, one of iron and the other of wood, at different times.

Cross-int. 66. Where did you try them?

Ans. The wooden plow on a piece of ground under cultivation, in Smyrna.

Cross-int. 67. Were there many double-shovel plows in use in and around Smyrna?

Ans. I could not say.

Cross-int. 68. Did you ever hear any complaints from persons who used wooden double-shovel plows that they did not work well?

Ans. The first one that I ever saw was thought to not work well; never heard any complaint except in that instance.

Cross-int. 69. You tried the first wooden double-shovel plow before you sold it, did you?

Ans. When I completed the plow I tested it, and was satisfied with it.

Cross-int. 70. Do you know who made the wooden double-shovel plow you first saw?

Ans. I understood that a man by the name of Pennington made the wood work; he lived in Smyrna.

Cross-int. 71. Do you know in what part of the town his shop was located?

559 Ans. I know where he worked in two places in Smyrna, but I do not know where the plow was made; he learned his trade in one place, and ran a shop in another after he had learned his trade.

Cross-int. 72. Were those two shops located near each other?

Ans. About three or four hundred yards apart.

Cross-int. 73. How near was your shop located to either of said two shops?

Ans. The shop Pennington ran was about one hundred feet or more from my father's shop, on the same side of the street; I have to guess at the distance.

Cross-int. 74. Did said Pennington occupy the shop just spoken of at the time and after you entered your father's employment?

Ans. No, sir; he was not there when I took the forge; he came there afterward.

Cross-int. 75. Do you recollect how soon afterwards?

Ans. I cannot recollect.

Cross-int. 76. How near was your shop to the shop or place where Pennington worked before he moved to the shop before referred to?

(All questions referring to Pennington and his shop objected to by defendants' counsel as irrelevant and incompetent.)

Ans. Pennington's shop was between my father's shop and the shop where he learned his trade; they were all three on the same street.

Cross-int. 77. Please state Mr. Pennington's initials, and also whether he lived there when you moved away from Smyrna.

Ans. His name is Lovelace Pennington; my impression is that he lived there when I left.

Cross-int. 78. Did the iron double-shovel plows that you made in A. D. 1853 differ in any respect from any that you may have made previously?

Ans. No, sir.

Cross-int. 79. Did you improve in any respect upon the first iron double shovel plow that you made?

560 Ans. No, sir; nothing but what I described.

Cross-int. 80. What else, if anything, did you invent while living in Ohio?

Ans. I invented a rod jack for turning small rods.

Cross-int. 81. When did you invent that?

Ans. That was about in A. D. 1848 or 1849; I never patented it.

Cross-int. 82. When, for the first time, did you see an iron double-shovel plow that was not of your own construction?

Ans. I think in A. D. 1850, possibly in A. D. 1851.

Cross-int. 83. Where did you see it?

Ans. In Smyrna.

Cross-int. 84. Do you know by whom it was made?

Ans. I do not.

Cross-int. 85. Are you certain that it was either in A. D. 1850 or A. D. 1851 that you saw such a plow? May it not have been in A. D. 1852 or 1853?

Ans. No, sir. I left there in A. D. 1853; my impression is it was in A. D. 1850.

Cross-int. 86. When do you think that it was when you sold the first iron beam double shovel plow?

Ans. In the summer of A. D. 1848.

Cross-int. 87. What enables you to fix that date?

Ans. There is a reason why I fix it in A. D. 1848; it is that it was the year before some parties started for California, which was in A. D. 1849.

Cross-int. 88. May it not have been the year after A. D. 1849?

Ans. No, sir.

Cross-int. 89. Did you keep any account of plows sold or made?

Ans. Nothing; only by memory.

Cross-int. 90. There are no books or memoranda, then, by which the sale of a double-shovel plow or plows could be verified?

Ans. I have none.

Cross-int. 91. Then you are testifying from memory only, are you not?

561 Ans. Memory and circumstances by which I fix dates.

Cross-int. 92. By circumstances, if I understand you rightly, you mean that you think you sold plows before the "California fever," rather than after?

Ans. Before and after. I fix the first date before the "California fever," because I had made before, and a party bought who was going to California.

Cross-int. 93. Can you give the name of that party?

Ans. Yes, sir; Elias Phipps, of Smyrna.

Cross-int. 94. Are you positive as to that?

Ans. As much so as I could be of anything that I know.

Cross-int. 95. Did Elias Phipps go to California?

Ans. He started for there; he did not get there; he was not gone long enough to go to California and return.

Cross-int. 96. Did you sell about the same number of iron-beam double-shovel plows each year, or did you sell more of such plows about the time you left Smyrna?

Ans. No, sir; I think there was more sold in A. D. 1850.

Cross-int 97. Referring to Denfendants' Exhibit Gilmore Plow, state, if you please, whether it correctly represents the manner in which the beams were secured to each other in the iron-beam double shovel plow, as constructed by you?

(Objected to by counsel for defendants, witness having already described his plow.)

Ans. In substance, I think it is. I welded the beams together at the forward end with a hole to insert a ring or link.

Cross-int. 98. You did not rivet them together?

Ans. No, sir.

Cross int. 99. You stated in your direct examination that you made the beams thinner in front than in any other part; please state the reasons therefor.

Ans. Because the weight of stock was unnecessary there; saving a few cents in cost of materiai; making a lighter plow, and just as good as though the whole weight was there.

Cross-int. 100. Does Defendants' Exhibit Gilmore Plow cor-
562 rectly represent the shape of the beams from the front end to the place or point where the shovels are attached?

Ans. Well, I have made them about that same angle, and I have made them with a rounder curve at the first arch.

Cross-int. 101. How old were you when you made your first iron-beam double-shovel plow?

Ans. About fifteen years old.

(Above question objected to by defendants' counsel.)

WITNESS. I would correct my last answer. Upon figuring my age, I see that it would make me fourteen years old.

Cross-int. 102. Do you believe, or not, that it is a difficult matter to remember events that have occurred over twenty years ago?

Ans. I find my memory serves me better in early life than as to late years. I can recollect better things that have occurred in boyhood than I can things that have now passed.

Cross int. 103. Do you consider your memory of dates excellent or not?

Ans. I don't think that I am ordinarily excelled. I have a fair recollection, as I understand myself.

Cross int. 104. Do you know whether any part of that pattern is in existence now?

Ans. No, sir; there is none of it to my knowledge.

Cross-int. 105. Have you ever been back to Smyrna to visit there, since you left in A. D. 1853?

Ans. No, sir.

Cross-int. 106. About how many of the straddle-the-row plows did you make while you were in Ohio?

(Question objected to as irrelevant and immaterial.)

Ans. Three.

Cross-int. 107. Why are you so positive as to that?

Ans. I don't think I ever made but three; because I have a recollection of the peculiarity of the attachments, and how made.

Cross-int. 108. Do you include them in the twenty-five plows before referred to?

Ans. No, sir.

563 Cross-int. 109. How many inches back from the clevis was the point where the beams began to diverge?

Ans. My recollection is about four inches of union or weld.

Cross-int. 110. You say that you sold some plows that were made at a place called "Hole in the Ground," and you also say that you do not know by whom they were made; how, then, do you know that they were made at that place?

Ans. By representations of the parties delivering the plows.

Cross-int. 111. Were they of iron or of wood?

Ans. Iron.

Cross-int. 112. Do you know whether any of them are in existence now?

Ans. I do not know.

Cross-int. 113. Did you or did you not vary the distance, in different plows, for which the beams were welded together?

Ans. I aimed to make them all alike.

Cross-int. 114. Have you made any iron-beam double-shovel plows since you left Ohio?

Ans. Yes, sir.

Cross-int. 115. Where did you make them?

Ans. In Millersburg, Mercer County, Illinois.

Cross-int. 116. How long did you reside there?

Ans. I have made it my home since A. D. 1853, until the last two years.

Cross-int. 117. Have you made many iron-beam double-shovel plows since you left Ohio?

Ans. Yes, sir. I will say twenty-five.

Cross-int. 118. Do you recollect whether you made any in the year A. D. 1853 or A. D. 1854, after you came to Illinois?

Ans. I made one in A. D. 1854.

Cross-int. 119. Where were you born?

Ans. In the neighborhood of Cadiz, Ohio, about fifteen or twenty miles from Smyrna.

Cross-int. 120. When did you move to Smyrna?

564 Ans. I was too young to know. I can recollect only of Smyrna.

Cross-int. 121. State, if you please, the names of persons who lived near your place of business at the time you left Smyrna.

Ans. Well, the persons I have named; and I recollect one William Johnson, now dead, and a man named Larimer; he came there shortly before I left there. Johnson had some sons who were quite young.

Cross-int. 122. Do you know whether there is in existence now any iron beam double shovel plow of your construction made by you before you left Ohio?

Ans. I do not know.

Cross-int. 123. Did you ever hear of a Matthew G. Slemmons as being the inventor of an iron double-shovel plow?

Ans. Yes, sir.

Cross-int. 124. When did you first hear that?

(Last two questions objected to by defendants' counsel as not proper cross-examination.)

Ans. The first was in A. D. 1855.

Cross int. 125. In what kind of business were the several persons named Phipps engaged?

Ans. Hotel-keeping and merchandising.

Cross-int. 126. To which one of them did you sell an iron-beam double-shovel plow?

Ans. John C. Phipps, sr., paid for the plow.

Cross-int. 127. Did you ever make application for a patent on this iron-beam double shovel plow?

Ans. No, sir.

Cross-int. 128. Who first asked you to testify in this case, and when was it?

Ans. I was inquired of what I knew of the use and manufacture of the double-shovel forked iron beam one-horse plow. As to the time, my first impulse would be that it was in September of last year, or it might be in October—some time in the fall—when I received a letter from Mr. Stem, of Cincinnati.

565 Redirect examination:

Redirect int. 129. What inventions have you made during the course of your life?

Ans. I invented the forked iron beam one-horse plow and double plow both. I invented a rod jack or wrench. I invented a swage-block for heading axle clips. I also invented a bolt header for making round and oval headed bolts. These inventions I made before leaving Ohio. Since then I have made several inventions, and I have procured patents for two of them. I have as many as four different plans for cultivators in model form, if they have not been destroyed.

Redirect int. 130. State the circumstances under which you first heard of the Slemmons patent.

Ans. I was approached by a man representing the Slemmons patent. He wanted to sell me the right to make the forked iron beam plow. I refused to buy, as there was no right in it. He wished me, in conversation, to say nothing of the right, with one exception, for which they claimed the patent, and that was adjustability in widening the plow; that was all the claim he made; he did not claim anything for fork or curve. I looked his papers over, and that was the only claim he set up. He claimed the movement at front, and slot-movement in brace-bar; that was the only claim that he set up.

He wished me to say nothing in regard to the plow, learning where I came from, and my knowledge of the same, that he might be able to do well with the plow. This conversation occurred after I told him I had made the plows in Ohio, and where; it occurred at Millersburg, Illinois.

Recross-examination:

Recross-int. 131. Did you obtain a patent on any of the inventions that you made while you lived in Ohio?

Ans. No, sir; the propriety of doing so never occurred to me.

566 Recross-int. 132. Do you recollect the name of the person who approached you on the subject of the Slemmons plow?

Ans. I do not recollect the name.

JAMES S. GILMORE.

Which said deposition was by said James S. Gilmore signed in my presence, this first day of February, A. D. 1877.

CHAS. W. O'NEIL,
Notary Public, R. I. Co., Ill's.

Testimony of J. B. Danforth, jr.

Int. 1. State your name, residence, and profession.

Ans. Joseph B. Danforth, jr.; residence, Rock Island, Illinois; business, editor of the "Rock Island Daily Argus," a newspaper published in said city.

Int. 2. How were you engaged between the years A. D. 1851 and A. D. 1855?

Ans. I was editor of the "Rock Island Republican," the predecessor of the "Argus." The name of the paper was changed in A. D. 1854 to the "Argus."

Int. 3. Do you know when the Chicago and Rock Island, now called the Chicago, Rock Island and Pacific Railroad, was first completed to Rock Island?

Ans. I do. It was formally opened to Rock Island on the 22d day of February, A. D. 1854. Passenger trains on said road were running to Tiskilwa in September, A. D. 1853, to Sheffield in November, A. D. 1853, and to Geneseo in December, A. D. 1853.

In the files of the Rock Island Republican of date of March 1, A. D. 1854, which I now produce, and which I testify is the true file of said paper, I find a full account, written by myself, of the arrival of the first train on said road at Rock Island, February 22, A. D. 1854.

Cross examination:

Cross-int. 4. State if you please the distance in miles between Tiskilwa and Sheffield.

Ans. I suppose twelve or fifteen miles.

567 Cross int. 5. You say that the road was completed to Sheffield in November, A. D. 1853; do you state that from memory or from any record found in your paper?

Ans. From memory.

Cross-int. 6. Do you find a notice in the Rock Island Republican of date December 21, A. D. 1853, that trains will run from and after September 12, 1853, from Chicago to Tiskilwa?

Ans. I find an advertisement in the Republican running through the fall of A. D. 1853, signed by A. R. Gilmore, superintendent, giving notice that passenger trains will run to Tiskilwa from and after September 12, 1853.

I presume it was in the paper of date December 21, 1853, but I did not take particular notice.

Cross-int. 7. Is Tiskilwa situated between Sheffield and Chicago?

Ans. It is.

J. B. DANFORTH, JR.

United States circuit court, district of Kentucky. In equity.

WELLS W. LEGGETT ET AL. *vs.* B. F. AVERY ET AL. } No. 3016.

It is hereby stipulated and agreed between counsel in the above entitled cause that if the Frank Gilmore named in the last amended

answer of the respondents were put upon the stand he would testify as follows: That he resides in Muscatine, Iowa, that he is the father of James S. Gilmore, of Aledo, Illinois; that he is over sixty-five years old, and in very feeble health; that he moved with his family to Illinois from Smyrna, Harrison County, Ohio, 1853; that prior to that time he was engaged in business at Smyrna as a blacksmith; that his son James began working in the shop at a very early age, as early as twelve years, and was quite ingenious, and before they moved to Illinois had almost entire charge of some departments of work; that they made and sold, while living at Smyrna, iron double shovel plows, with beams
568 united at and diverging from the clevis and bent downward to form standards for the shovels; just how many of these plows they made and sold he cannot remember, nor just when they began making them, but thinks it was several years before they moved to Illinois; that he remembers selling one to John C. Phipps, of Smyrna, and also to Chas. Michener.

ARTHUR STEM,
For HATCH & PARKINSON,
Solicitors for Respondents.
WM. BEHRENS,
For M. D. LEGGETT & CO.,
Counsel for Complainants.

FEBRUARY 1, 1877.

Circuit court of the United States for the district of Kentucky. In equity.

WELLS W. LEGGETT ET AL.
vs.
B. F. AVERY ET AL.

Examination of witnesses on behalf of the respondents under the 67th rule in equity, as amended, pursuant to the annexed notice.

Present, L. L. Leggett, for the complainants, and Arthur Stem for the defendants.

By request of parties it is ordered that these depositions be taken by question and answer.

Testimony of John W. J. Alexander.

JOHN W. J. ALEXANDER, a witness produced on behalf of the respondents, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by Arthur Stem, esq., of counsel for the respondents, as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. John W. J. Alexander; age, 39 years; residence, Uhrichsville, Ohio.

Ques. 2. How long have you resided in Uhrichsville?

Ans. Since November, 1875.

569 Ques. 3. Where did you reside prior to your coming here to live?

Ans. Up to April, 1875, I lived on my farm near Crossville, Ohio; in that month I moved to Moorefield, Harrison County, Ohio, where I lived until September 15, 1875; I then removed to New Market, Harrison County, Ohio, where I lived till I came to Uhrichsville, O.

Ques. 4. Did you, or did you not, while residing on your farm at Crossville, use a double-shovel iron-beam plow for plowing corn, etc.?

Ans. I did.

Ques. 5. When, if you remember, did you use it for the first time?

Ans. I remember of using it in about 1852 for plowing potatoes.

Ques. 6. How do you fix this date?

Ans. We built the barn in 1853. We begun the same in April and finished by the 25th of June. The plow was on the farm several years before I plowed potatoes with it there in the orchard in 1852.

Ques. 7. Can you swear positively to the date when you plowed potatoes with said double iron-beam shovel plow?

Ans. I can swear that it was in 1852 that I plowed potatoes in the orchard opposite the house with said plow.

Ques. 8. Have you any other way of fixing the date of using the said plow?

Ans. No; I have no other way of fixing the date; but am positive that it was in 1852.

Ques. 9. You stated that the plow was on the farm several years before building the barn; do you remember whether any one else used the plow prior to the time you plowed potatoes with it in 1852?

Ans. James Kirkpatrick used this plow in plowing corn in a field that lays near cross-roads, commonly called the Titus cross-roads, some years before I used it.

Ques. 10 Please state how James Kirkpatrick came to be using your plow?

570 Ans. He got it from my father to plow corn with. The same year he was married he moved on my father's farm.

Ques. 11. How long did he live on your father's farm?

Ans. He lived there one or two years; I don't know which.

Ques. 12. It was while living on your father's farm, was it, that James Kirkpatrick used this plow to plow corn in said field?

Ans. Yes, sir, it was.

Ques. 13. Did he ever use it afterwards?

Ans. No; not that I know of.

Ques. 14 Please describe said plow.

Ans. It was a double shovel iron-beam plow; the beams welded together at front; and through the ends of beam was a hole in which was an iron ring, to which single-tree was fastened.

Ques. 15. How were these beams shaped at the rear end?

Ans. They were curved down. One was made a little longer than the other so that one shovel would stand a little behind the other. They were about eighteen or twenty inches apart at rear end. Shovels were bolted on with an iron bolt at the lower end of beam.

Ques. 16. I now show you a sketch, marked "Defendants' Exhibit, Gilmore Plow," and ask you whether the plow used by you and Mr. Kirkpatrick, to which use you have just testified, differed from said sketch; if so, in what respect?

Ans. The only difference between said plow and this sketch is that the sketch shows a plow with iron handles. The plow we used had wooden handles, with simply a short iron brace to strengthen the handles; instead of a regular clevis, our plow had simply a ring through end of beam.

Ques. 17. Was there any other difference?

Ans. The brace between the beams was iron. There was no other difference except in the handles.

Ques. 18. Is your father living?

Ans. He is not. He died in 1856.

571 Ques. 19. Do you remember the year in which Mr. Kirkpatrick moved on your father's farm and used said plow?

Ans. It was in the year he was married. I won't say for sure when, but some time before 1850; I am positive it was before 1850.

Ques. 20. What became of said plow?

Ans. I don't know. I think my mother sold it to John Porter.

Ques. 21. Where is John Porter now?

Ans. He is in Missouri some place, I don't know whereabouts.

Ques. 22. Where, when and of whom was this plow purchased, if you know?

Ans. I don't know.

Cross-examination by L. L. LEGGETT:

Ques. 1. When were you born?

Ans. 5th day of April, 1838.

Ques. 2. What was occupation of your father at that time?

Ans. He was a tailor by trade.

Ques. 3. How long did he pursue this trade?

Ans. I can't tell for one reason; the reason is I don't know whether he pursued it after 1852 or not.

Ques. 4. What did he do after quitting the tailor trade?

Ans. He did not do nothing much but tend the stock and like of that.

Ques. 5. How long before this was the barn built?

Ans. The barn was built in 1853.

Ques. 6. When did you first use a plow of any description?

Ans. The first plow I used was in 1852. It was this plow.

Ques. 7. Was this your first experience with use of plows, and had you at any time before that used any other plow?

Ans. I can't say positive as to that.

Ques. 8. At this time did your father own any other plow than the double-shovel device alluded to by you?

572 Ans. Not as I know of—he did not.

Ques. 9. Was his entire plowing done with this double-shovel plow?

Ans. Yes; with the double-shovel; it was.

Ques. 10. Did it operate well as a subsoil implement?

Ans. Yes, sir.

Ques. 11. Would it generally turn a good furrow?

Ans. It would turn a good furrow against the corner rows.

Ques. 12. Did your father own any other plow?

Ans. Not as I mind of, only one of those plows to break ground with.

Ques. 13. Where did he get that plow?

Ans. I think he got it from Detmore. I don't know for certain, but think so.

Ques. 14. When did he get it?

Ans. I don't know.

Ques. 15. Did you ever use that plow?

Ans. Not to my recollection. I did not.

Ques. 16. Are you certain you never used it?

Ans. Well, I couldn't tell.

Ques. 17. You may have used it, but have forgotten it.

Ans. I might have used it, but have forgotten it. I used a wooden-beam plow, but it might have been a Laizure subsoil plow.

Ques. 18. Were the Laizure plows used in your vicinity at the time you mentioned?

Ans. I don't know anything about that.

Ques. 19. Did your father own any other agricultural implement than the plows you have mentioned?

Ans. He owned plows, harrows and these wooden cultivators.

Ques. 20. How many cultivators did he have?

Ans. Only one.

Ques. 21. Where did he get it?

Ans. I can't tell.

Ques. 22. Can you make a sketch of the double-shovel plow if required?

Ans. Yes, sir.

573 Ques. 23. Can you make a drawing of the other plow that your father owned?

Ans. I guess I can; pretty close to it.

Ques. 24. Would it be as accurate and reliable as your drawing of the double-shovel plow?

Ans. I don't know as it would.

Ques. 25. Can you make a drawing of the harrow your father owned?

Ans. Yes, sir.

Ques. 26. How long since you used that harrow?

Ans. I used it before my father died; it was twenty-three years ago.

Ques. 27. In what year was it you first used that harrow?

Ans. I will put it at 1854.

Ques. 28. What particular thing enables you to fix that date?

Ans. It was the year before Samuel Dunlap put the big meadow in wheat.

Ques. 29. Is this all that enables you to fix the date?

Ans. I believe it is.

Ques. 30. How do you know that it was in 1854 that Samuel Dunlap put the meadow in wheat?

Ans. Well, it was because he rented it from my father; I won't say positive it was in 1854.

Ques. 31. Can you mention any particular incident that happened in 1853?

Ans. Not as I mind of; when we built the barn it was in 1853.

Ques. 32. Mention some particular thing that transpired in 1855?

Ans. In the fall of 1855 my left foot was cut off.

Ques. 33. Can you mention anything else that happened in that year?

Ans. Yes; my mother got her leg sprained that fall.

Ques. 34. Tell us something that happened in 1850?

Ans. I think I went to school in 1850 to Wm. Ramsay; I ain't certain about that.

Ques. 35. Give some account of the year 1851.

574 Ans. I can't give much account of that year.

Ques. 36. Tell us something of 1852?

Ans. I was at home then; I was going to school that summer; I went to school till the 1st of July; I can recollect of nothing else.

Ques. 37. You are testifying from memory, are you, and have been throughout your examination?

Ans. Not altogether.

Ques. 38. How otherwise have you testified?

Ans. From knowledge.

Ques. 39. How do you distinguish between knowledge and recollection?

Ans. I recollect back the way they was.

Ques. 40. What particular recollection have you of the year 1859?

Ans. In 1859 John Houser worked for me.

Ques. 41. What about 1857?

Ans. John Porter put a field for me in corn in 1857, or rather for my mother.

Ques. 42. How came you to testify in this case?

Ans. Coming out of Mr. Kennedy's store, Mr. Robinett was talking to O. B. Bartlett, and Mr. Bartlett says, "John, come here." He says: "John, do you mind when the first iron double-shovel plows were used with wooden handles?" Says I: "I guess I do." He says: "When were they used?" And Mr. Robinett asked when I knew they were used. I old him we had one on the farm there in or about the year 1852. My father had got one some time before 1852. I don't know but it was four or five or six years before I plowed potatoes with it. Mr. Robinett took me up to Mr. Stem, and Mr. Stem asked me if I knew anything about these plows, or if I had ever used one. I told him I used one before 1853; that I had plowed potatoes with one on my father's farm, near Cassville.

Ques. 43. Did you ever have any correspondence with any parties relative to this plow matter?

Ans. Not till I met Mr. Stem.

Ques. 44. Have you ever made an ex parte deposition as to any facts referred to in your present examination?

575 Ans. Yes.

Q. 45. Was that in writing?

Ans. Yes.

Ques. 46. Will you produce it as a part of your cross-examination?

Ans. Yes, sir. I will.

Ques. 47. Will you allow it to be taken as an exhibit?

Ans. Yes, sir.

Ques. 48. I now show you a writing and sketch, and ask you if it is a correct copy of the ex parte affidavit above referred to?

Ans. It is.

(Said copy filed, and marked Complainants' Exhibit Alexander's Affidavit.)

(Counsel for defendant objects to questions Nos. 44, 45, 46, 47, and 48, and also to exhibit, as being incompetent and irrelevant.)

Ques. 49. Who prepared this affidavit, if you know?

Ans. Mr. Stem.

(Question objected to on same ground as others by counsel for defendant.)

Ques. 50. Was your conversation with Mr. Robinett that you have mentioned the only one up to that time that you had relative to the plow in question?

Ans. Yes.

Ques. 51. During the year previous to that conversation had you ever said anything to anybody, or heard anybody say anything, about the double-shovel iron plow?

Ans. Never, till I met them that day on street.

Ques. 52. Nor the year before?

Ans. No, sir.

Ques. 53. Did you ever have conversations or hear conversations about such a plow as the iron double-shovel implement referred to by you?

Ans. No, sir; never till I met Mr. Robirett on the street less than a month ago.

Ques. 54. Have you given the subject any thought or attention during the year past up the time you saw Mr. Stem or Mr. Robinett?

576 Ans. Not excepting the last six weeks.

Ques. 55. Then your mind or attention has not been directed to this iron double-shovel plow until Mr. Robinett or Mr. Stem approached you to learn what you knew about it? Is this true?

Ans. Not until they approached me on the subject.

Ques. 56. Have you any books, papers, or written memoranda of any description that will enable you to fix clearly any date prior to 1854? If so, what?

Ans. I won't say for certain.

Ques. 57. You say your father owned one of the double-shovel iron plows five or six years before you first used it. How old were you when he first owned it?

Ans. I think I was about ten years old.

Ques. 58. You say you was ten years old when your father first got the plow?

Ans. I was ten years old anyhow.

Ques. 59. You say you were born in 1838; that you were at least ten years old when your father purchased the iron double-shovel plow, and that it was five or six years after that when you first used it. Was it five or six years, or may it not have been longer?

Ans. Five or six years, or it may have been longer.

Ques. 60. Very well. According, then, to your own figures you never used an iron double shovel plow before 1854 at the earliest possible calculation. How do you reconcile that with the statement that you used that plow first in 1852?

Ans. I used the plow in 1852, and I can prove it.

Redirect examination:

Ques. 1. In answer to cross-question 59, which is as follows, to wit (counsel for defense reads cross question 59).

Ans. I suppose it was five or six years, or probably longer—I understand the question in this way—when I used the plow; it was in 1852.

Ques. 2. Are you sure of the date at which your father purchased the plow?

Ans. Indeed, I ain't.

577 Ques. 3. Why did you say that you was ten years old when your father purchased the plow?

Ans. I thought I was ten years old, but I was not.

Ques. 4. What makes you say now that you was not ten years old?

Ans. Because in looking back I saw I made a little mistake in fixing up my dates.

Ques. 5. What do you mean by that?

Ans. I mean these men bothered me here; I did not get my statements the way I wanted them.

Ques. 6. Do you mean in cross question 59 that it was five or six years before 1852, when you used the plow, that your father bought it?

Ans. Yes.

Recross-examination:

Ques. 1. Have you been instrumental in informing of or procuring witnesses for the defendant' in this case?

(Objected to by the defendants' counsel as incompetent and irrelevant.)

Ans. I went through with Mr. Stem to Smyrna to see witnesses, then to Moorefield, and then to Cassville, then down here.

Ques. 2. Is that all?

Ans. I went up to Cassville to see Jas. Kirkpatrick.

Question by counsel for defendant'.

Ques. 1. Did you not go with Mr. Stem simply to drive the sleigh and show him the roads, and had he not told you whom he was going to see with the exception of those at Cassville?

(Objected to as leading by .)

Ans. I did; yes, sir.

JOHN W. J. ALEXANDER.

Testimony of William Quillen.

WILLIAM QUILLEN, being first duly sworn, as hereinafter certified, says as follows:

Ques. 1. What is your name, age, and occupation, and place of residence?

578 Ans. William Quillen; I am 47 years old; am a miner. My residence is Urichsville, Ohio.

Ques. 2. How long have you lived in Urichsville?

Ans. It is twenty-four years ago last fall.

Ques. 3. Where did you live in 1850?

Ans. My home in 1850 was in Cadiz, Ohio. In the forepart of May of '50 I came to the farm of James Edwards, near Franklin, Harrison County, Ohio, on a visit to see a brother and sister that Jas. Edwards had bound to him. After I was there a day or so Mr. Edwards got at me to work for him. I hired with him to work till after harvest was over. I worked with him until after the 15th of August, 1850. Then, on the 15th of August, I turned in and married his sister in-law. I then moved to Cadiz, Harrison County.

Ques. 4. State whether or not you have ever seen and used a double-shovel iron beam plow?

Ans. Yes, sir; I did.

Ques. 5. State when and where you used such a plow?

Ans. I used that plow on farm of James Edwards, in May and June, in 1850.

Ques. 6. Please describe said plow.

Ans. The two beams were iron, turned down in rear, and shovels attached; beam comes together in front, at which place a ring is attached.

Ques. 7. Please state how the beams were fastened at the front end or clevis end.

Ans. I don't remember exactly, but think it was welded.

Ques. 8. Are you sure that it was either welded or riveted?

Ans. I am sure it was either the one or the other.

Ques. 9. Were the beams rigidly fastened together?

Ans. Yes; they were solid; the ring went through both.

Ques. 10. I now show you sketch, marked Defendants' Exhibit Gilmore Plow," and ask you whether the plow that you have testified that you used in 1850 differed from the one shown in this sketch; if so, in what respect?

579 Ans. I don't see any difference, except in this ring in the front. This looks like a clevis, the other was a ring that passed through both beams. The handles were attached to the outer ends of brace "B," fastened with burrs. I don't remember whether there is only one such brace or not.

Ques. 11. Can you swear positively that you used said plow on the farm of James Edwards in the spring and summer of 1850?

Ans. Yes, sir; I can?

Ques. 12. What makes you so certain?

Ans. From the fact that it was the summer I was married.

Ques. 13. Did you ever live on that farm after or before the spring and summer of 1850?

Ans. No, sir; I did not.

Ques. 14. Have you any record showing date of your marriage?

Ans. Yes, sir; I have.

Ques. 15. Please produce said record.

(Family Bible of witness was here produced, wherein by record it appears that he was married August 15th, 1850.—J. T. McCULLOUGH, *Notary Public.*)

Ques. 16. That is a true and correct record, is it?

Ans. Yes, sir.

Cross-examination by L. L. LEGGETT:

Ques. 1. After your marriage you say you removed to Cadiz. What was your occupation at that place?

Ans. I went there to finish my apprenticeship in stonemason's trade.

Ques. 2. While at Cadiz did you see any of these double-shovel iron plows?

Ans. No, sir; I didn't.

Ques. 3. How long did you live at Cadiz?

Ans. I lived there in neighborhood of a year; it might have been more, it might have been less.

Ques 4. Have you lived at Cadiz since then?

Ans. I have not.

580 Ques. 5. Have you visited Cadiz since that time; and if yea, how often?

Ans. I have. I have been there frequently since.

Ques. 6. Have you been there between the years of 1853 and 1855, or 1856?

Ans. I have. I suppose I have been there pretty near every year since I left there at fairs.

Ques. 7. Did you ever know of or become acquainted with Elijah Laizure, or Matthew G. Slemmons, at Cadiz?

Ans. I was acquainted with both the men.

Ques. 8. Did you ever see plows of their manufacture like unto the one referred to in your deposition as the iron double-shovel plow?

Ans. Not to my knowledge.

Ques. 9. Did you ever see any of the plows in or about Cadiz, or elsewhere, between the years 1853 and 1855?

Ans. I never seen any of the plows, except the one referred to, anywhere.

Ques. 10. Have you seen any since then; if so, where and when did you see first?

Ans. Since that time I have paid no attention to them, having nothing to do with them.

Ques. 11. Then am I correct in understanding that the plow you allude to in your testimony is the only one of the kind that you have any recollection or knowledge of.

Ans. It is.

Ques. 12. At the time you saw this plow, had you been accustomed to the use of plows.

Ans. Very little.

Ques. 13. Did this implement at that time strike you as anything peculiar or remarkable?

Ans. It did. It was rather a curiosity to me, for I had not seen anything like it before.

Ques. 14. Have you since then up to the present year had any conversation about that plow?

Ans. I have not.

Ques. 15. Have you had occasion during the interim to give any thought or attention to that plow?

Ans. No, sir; I have not.

581 Ques. 16. Then is it not true that during the last 27 years or thereabouts this device has neither been the subject of your attention nor has been seen or used by you?

(Objected to as an assumption not warranted by testimony.)

Ans. Shovel plows have been the least of my thoughts, as I have had no use for them.

Ques. 17. Since the time spoken of in your direct testimony as the occasion of your first use of the plow in question, have you ever worked with that plow?

Ans. I have.

Ques. 18. Was it since your marriage?

Ans. Yes, sir.

Ques. 19. Was it since you moved from Cadiz, after your marriage?

Ans. Yes, sir.

Ques. 20. How long after?

Ans. Two years.

Ques. 21. How often since your marriage have you seen or used that plow?

Ans. I can't tell how many times I used it.

Ques. 22. May it not have been longer than two years after your marriage, as above stated?

Ans. No, sir. It was just two years.

Ques. 23. Are you testifying from memory or from definite data?

Ans. I am testifying from memory.

Ques. 24. Then considering that 1852 was twenty-five years ago, may not this insignificant epoch of your life possibly be so indistinct in memory that you may be mistaken in so positive an assertion of date?

Ans. I don't think it can.

Ques. 25. Is your memory so retentive as that you can recollect such minor occurrences as the one here in consideration when they happened so long ago?

Ans. Yes, sir.

Ques. 26. Do you recollect any incident connected with New-Year, 1847?

Ans. Well, I don't know that I do.

Ques. 27. Or Christmas of that year?

582 Ans. No, I don't know that I mind anything special that occurred.

Ques. 28. Or Washington's birthday of that year?

Ans. No, sir; I don't remember of anything.

Ques. 29. Or Thanksgiving day of that year?

Ans. I don't remember anything about them. In those days there was not much attention paid to these things.

Ques. 30. Or the 4th of July?

Ans. I know nothing about it.

Ques. 31. Can you specify any particular circumstance connected with any of the above holidays for the year 1848?

Ans. Those holidays I don't know much about, for it was a thing I never paid any attention to.

Ques. 32. Or for the years from 1848 to 1860?

Ans. I could not say anything about holidays, for they are things I never paid any attention to.

Ques. 33. Is there any day in the year that you celebrate or commemorate?

Ans. I celebrate the fourth of July frequently.

Ques. 34. Can you give any account of this day in 1873?

Ans. I could not give any more account of it than of last 4th of July.

Ques. 35. Or 1872?

Ans. I don't remember anything that happened.

Ques. 36. Or any year back to 1850?

Ans. I don't know of anything that happened in any of those years that I could swear to.

Ques. 37. Can you recollect any occurrence that happened in 1847?

Ans. I believe not.

Ques. 38. Or 1848 or 1849?

Ans. In the summer of 1848 I layed the bigger part of the summer with the typhoid fever; after getting over fever I went to visit a neighbor who worked in a coverlet shop. In 1849 I went to work with Josiah Cregg & Greer, as an apprentice in stone-cutting and mason trade. I worked with them on till May in 1850.

583 Ques. 39. What, besides your marriage, can you say for 1850?

Ans. Well, in 1850, after I was married, the latter part of August or the first part of September, I won't say which, I moved back to Cadiz; went to keeping house there, and resumed my work again with Cregg & Greer. I worked on with them until August, 1851; we went to Woodsfield to build a jail, where I quit them.

Ques. 40. How do you know that it was in 1852 when you used the iron double-shovel plow?

Ans. I know from this fact, that I moved back in the fall of 1851, onto the farm of Elisha Jones, and in the spring of 1852 I moved on the farm of Hugh Birney, joining the farm of James Edwards, and that summer I exchanged work with James Edwards.

Ques. 41. How was this plow you speak of joined at the clevis-end?

Ans. I could not say positive whether it was riveted or welded; it was there permanant.

Ques. 42. If it was bolted, how many bolts did it have?

Ans. I don't know anything about the bolts. I could not say it was bolted.

Ques. 43. How far back from the clevis-point did the beams begin to diverge?

Ans. Could not say exactly, perhaps four or five inches.

Ques. 44. May it not have been ten or more inches; will you swear positively on that point?

(Question objected to, witness having already described the plow.)

Ans. I will swear positively it was not ten inches.

Ques. 45. When was the last time you saw that plow?

Ans. The last time I saw it, that I remember of, was in 1852.

Ques. 46. Did you ever hear or know of any other plow like that before 1854?

Ans. Not that I can swear to.

WILLIAM QUILLEN.

E. J. PHIPPS, being first duly sworn, as hereinafter certified, deposes and says:

Ques. 1. Please state your name, age, residence, and occupation.

Ans. E. J. Phipps; 50 years; Symrna, Harrison County, Ohio; tanner, at present.

Ques. 2. How long have you resided in Smyrna?

Ans. 31 years last August.

Ques. 3. How were you engaged in the year 1849?

Ans. During the summer I was engaged helping my father to farm; during balance of year I was clerking in my father's store.

Ques. 4. Do you or do you not remember of using or seeing any one else use an iron double shovel plow? If yes, please state when and where.

Ans. Yes, sir, I do; during this said summer of 1849, while working with my father.

Ques. 5. Please describe said plow.

Ans. Well, it was an iron double shovel, with iron beam or beams connecting at the forward part or clevis, diverging backwards to where the shovels are fastened—with a crooked or curved beam to fasten the shovels on.

Ques. 6. I now show you a sketch marked Defendants' Exhibit Gilmore Plow and ask you if said plow differed from the one shown in this sketch; if so, in what respect?

Ans. I think that this plow is as near a model of the plow that I described as possible—that is, the plow I used in 1849.

Ques. 7. Please state how you fix the date at which you used said plow as 1849?

Ans. The spring of 1850, in March, I started to California, and the summer previous was the summer I helped my father farm, when we used said plow.

Ques. 8. Did you go all the way to California; if not, when did you return to Smyrna?

Ans. I did not go all the way to California; I returned to Smyrna about the last of April, 1850.

585 Ques. 9. Might you not have used said plow after your return in 1850, or later; if not, why not?

Ans. I think not. Immediately after I came back from California, or about May 1, 1852, I went into the store, and did not farm any until 1858.

Ques. 10. Have you any other events or records by which you are perfectly clear and positive that you used that plow before starting for California?

Ans. Yes, sir.

Ques. 11. Can there be any doubt of it?

Ans. I think not.

Ques. 12. Have you any memoranda or any events by which you are enabled to fix the date when you started for California?

Ans. I have the receipt for the money paid to Wolf & Priest for my passage there.

Ques. 13. Can you produce said receipt?

Ans. Yes, sir.

Ques. 14. What is the date shown on that receipt?

Ans. March, 1850.

(Counsel for defendants here offers in evidence a copy of said receipt,

made by notary, and marks the same Defendants' Exhibit, Phipps' Receipt.)

Ques. 15. Are there any other events by which you can fix the date of use of said plow?

Ans. By an entry in my father's old books, which is as follows: "Sept. 30, 1849. Abijah Mathews, credit by rent of field, $5.31." Mathews had a running account at my father's store, and rent of this field was credited on his account.

Ques. 16. What connection has said entries with the use of the plow referred to?

Ans. I remember using the plow in that field. It is impressed on my mind by being ugly to handle on a steep hill; this field was all steep land.

Ques. 17. Did you, or did you not, use the said plow in any other field?

Ans. Not that I remember of.

586 Ques. 18. Did your father rent this field more than one year?

Ans. I think not.

Ques. 19. Is there any other entry in you father's books crediting Mr. Matthews with rent for said field?

Ans. Not that I know of.

(Counsel for defendants here offers in evidence a copy of said entry made by the examiner, and marks the same Defendants' Exhibit Phipps' Entry. Objected to as irrelevant).

Ques. 20. What was your father's name?

Ans. John A. Phipps.

Ques. 21. Do you remember when and where said plow was purchased?

Ans. I don't positively. My memory is that it was purchased at Gilmore's.

Ques. 22. By whom was it purchased?

Ans. By my father.

Ques. 23. What was the first name of said Gilmore?

Ans. Francis Gilmore, commonly called Frank, was the father's name; James S. Gilmore was name of his son.

Ques. 24. Are said Gilmores now residing at Smyrna; if not, when did they leave there?

Ans. They are not. They left in the fall of 1853; they started for Illinois.

Ques. 25. Did James and his father go to Illinois together?

Ans. They started from our place together in the fall of 1853?

Ques. 26. Is your father, John C. Phipps, living?

Ans. No, sir; he has been dead six years last May.

Ques. 27. Do you remember whether or not James S. Gilmore and his father were engaged in trade as blacksmiths before they left Smyrna?

Ans. Yes, sir, they were.

Ques. 28. Were they making iron double-shovel plows such as you have described, before they left Smyrna?

Ans. I think they were.

Ques. 29. How long before?

Ans. I would think two or three years.

587 Cross-examination:

Ques. 1. How far from your place was the shop of Gilmore?

Ans. About one hundred yards.

Ques. 2. Did you often visit their blacksmith shop?

Ans. Yes, sir; I was there frequently.

Ques. 3. Did you ever see them making any such plow as referred to in your deposition as the double-shovel iron plow?

Ans. My memory is that I have, but it is not distinct enough to say positively.

Ques. 4. It may then be true, may it not, that you never saw such a plow made or being made at Gilmore's shop?

Ans. It may be true, but my impression is that I have.

Ques. 5. Were you well acquainted with the Gilmores, father and son?

Ans. Yes, sir.

Ques. 6. Do you remember at that time of ever hearing either of them speak of such a plow as you have referred to?

Ans. I think not.

Ques. 7. Did you ever see them sell a plow like this, or at that time had you ever known of any one who had purchased such a plow from the Gilmores?

Ans. Not unless it was the one that my father bought, and I think he bought it of Gilmore.

Ques. 8. Do you know whether he did or not?

Ans. I do not.

Ques. 9. Were you intimately acquainted with the two Gilmores?

Ans. Yes, sir.

Ques. 10. What was the character of the young man James, at the time he lived at Smyrna?

Ans. Good, as far as I know.

Ques. 11. Was he a young man of more than ordinary ability, tact, or ingenuity?

Ans. As for mechanical ability, I think he was.

588 Ques. 12. Is this impression the result of your knowledge and recollection of him back at Smyrna almost thirty years ago, or have you learned something since then that would lead you to the conclusion that he was an ingenious fellow when young?

Ans. The result of observation when he was at Smyrna.

Ques. 13. What was the character of his father as a man of force, or as a manager in his business?

Ans. He was an energetic workman, but a bad financier.

Ques. 14. Do you think that at the age of twelve or thirteen years he would have passed over the management or control of a part or all of his shop business to his son James?

(Objected to as irrelevant and incompetent.)

Ans. I think not.

Ques. 15. Before you started for California had you often seen such a plow as above referred to?

Ans. My memory refers to the one plow I spoke of using only before that date.

Ques. 16. Your testimony then is from memory on this point, is it not?

Ans. Partly from memory and partly from dates.

Ques. 17. Did you use that plow or one like it after your return home?

Ans. No, sir.

Ques. 18. How long after that was it before you again saw or used such a plow?

Ans. I think I saw those plows during the following years of 1850, 1852, and on to the present time, but did not use any shovel plow up to 1858; I did not farm any again till that time.

Ques. 19. Where is that old plow that you say belonged to your father?

Ans. He sold it or traded it off. I do not know where it is.

Ques. 20. Do you know when he parted with it?

Ans. I can't tell you.

Ques. 21. Did the plow that your father owned prove satisfactory and successful, or otherwise?

589 Ans. He traded it off because he did not like it. He did not like it as well as a wooden plow that was made at "Hole in the ground."

Ques. 22. What other plow, if any, were you using before you started for California?

Ans. That is the only plow I used.

Ques. 23. Was the plow that you used in 1858 the same one that you used in 1847?

Ans. No, sir. The one I used in 1858 was a wooden stock plow, made at "Hole-in-the-Ground."

Ques. 24. You say that from the present time back for many years, 20 or more, you have seen these iron double shovel plows; how can you swear point blank, and without any doubt whatever in your mind, that you actually saw such a plow as shown in defendants' exhibit "Gilmore Plow," before 1853 or 1854; may not your memory possibly be at fault and your impression vague when going back so far in the past?

Ans. I did see such a plow at the time mentioned. I am fully satisfied that my memory serves me right.

Ques. 25. In what year did you first see a mowing-machine?

Ans. I believe it was in the year 1854; I won't swear positively to that.

Ques. 26. In what year did you first see a horse-rake?

Ans. In the same year I first saw a mowing-machine.

Ques. 27. When did you see the first threshing-machine?

Ans. It was before 1847, and that is as near as I can come at the date.

Ques. 28. Was you ever employed or worked at the above-named farming implements?

Ans. Yes.

Ques. 29. In the plow you used in 1849, did the beams converge at the clevis, or at a point back from the clevis?

Ans. They came together at the clevis.

Ques. 30. Was there not an arm or beam of some length extending back from the clevis before the iron plow-beams began to diverge?

Ans. I think not.

590 Ques. 31. Do you speak from impression or from a clear and positive knowledge?

Ans. I speak from memory that I believe to be correct.

Ques. 32. Will you swear there was not a single arm extending a foot or more back from the clevis before it was bifurcated to form the separate shovel beams?

Ans. Yes, sir.

Redirect examination:

Ques. 1. From what you know and recollect of James Gilmore, do you not think that his father allowed him, when not engaged otherwise, to work in the shop at devices or work of his own?

Ans. Yes, sir; I do.

Ques. 2. Did he not intrust to him certain kinds of work in which he had proved himself apt and capable at an early age, and had he not before he left Smyrna virtually charge of his own work?

Ans. I think he did.

E. J. PHIPPS.

Exhibit Phipps' receipt.

[Wolf & Priest, Nicaragua line, for California via San Juan, Lake Nicaragua Realzie.]

$200. No. 73.

Good to E. J. Phipps for passage through to San Francisco from Orleans.

Bed and board through.

WOLF & PRIEST.

Sept. 30th, 1849.

A. Mathers, Cr.

By bal. on rent $5 31

Above is a true copy.

J. F. McCOLLOUGH,
Notary Public.

Testimony of J. M. Bendure.

J. M. BENDURE, of lawful age, being first duly sworn, as hereinafter certified, deposes and says:

Ques. 1. State your name, age, and occupation, and place of residence.

591 Ans. My name is J. M. Bendure; age, 57; occupation, carpenter; I reside in Moorefield, Harrison County, Ohio, at present.

Ques. 2. How long have you lived in Moorefield?

Ans. I moved there in the fall of 1864.

Ques. 3. Where had you lived prior to that time?

Ans. The principal part of my time, until 1838, I lived in Guernsey County, Ohio. I lived in the town of Smyrna, Harrison county, Ohio, from 1838 till I moved to Moorefield, except about one year I was in the army.

Ques. 4. Do you remember Mr. Frank Gilmore and family living at Smyrna?

Ans. I do.

Ques. 5. Do you remember when he moved away from there; if so, when?

Ans. I do. In the fall of 1853.

Ques. 6. Do you remember any event that would enable you to fix this date?

Ans. I do. I was engaged at a job of carpenter work when the family came down the road; James Gilmore halloed across to us, good-bye. This was the fall I worked on a job of work for Mr. Broadus Bethel, which I am sure was in 1853.

Ques. 7. James went with his father, did he?

Ans. Yes, sir.

Ques. 8. How was Mr. Gilmore and his son engaged before they left Smyrna?

Ans. They were engaged in the blacksmith business.

Ques. 9. Do you or do you not remember whether they were manufacturing, as part of their blacksmith business, any kinds of farming implements; if so, what?

Ans. I do. They were. During their stay there they manufactured several different kinds of tools, harrows, plows, hoes, axes, etc.

Ques. 10. If you remember well enough, please describe the plows made by them in Smyrna.

Ans. I remember a plow which they made. He worked a good deal on shovel plows, single wooden plows. He also worked on double

592 shovel iron plows, which were two beams of iron connected at the front point and spread as it went back, and a curved leg or beam, or whatever it is called, curved downward to fasten shovels to.

Ques. 11. I now show you a sketch, marked "Defendants' Exhibit Gilmore Plow," and ask you whether those plows made by Gilmore in Smyrna differed in any material respect from said exhibit; if so, what?

Ans. I can't see any place where they differ.

Ques. 12. Do you remember how long the Gilmores were engaged in making such plows before they left Smyrna?

Ans. I believe some three or four years.

Ques. 13. Were you in the habit of going frequently to Mr. Gilmore's shop?

Ans. I was.

Ques. 14. Did you ever see James S. Gilmore or his father working on said plows?

Ans. I have seen his father working on these kind of plows.

Ques. 15. How long before they left Smyrna are you positive that they made and sold these plows?

Ans. The first I recollect to a certainty was in 1848.

Ques. 16. Please state how you fix this date.

Ans. I worked in the summer of 1848 at what is called chaff piling thrashing machine for Mr. Griffith. By working there I had errands frequently for bolts and irons for those machines in Gilmore's shop; I saw them making those double-shovel plows of iron when I was there on said errands.

Ques. 17. How near was Mr. Griffith's shop to Mr. Gilmore's?

Ans. I think not to exceed 100 yards.

Ques. 18. Please state where and how you was engaged the following year of 1849.

Ans. I remember I worked some that season on some threshing-machines, not a great deal; balance of the time at my trade, carpenter business; a part of the winter I worked in the cooper shop.

593 Ques. 19. During the stay of Gilmores in Smyrna did you work in any shop near there after this time?

Ans. I did. Through the winter season I worked in the shop sometimes adjoining Gilmore's.

Ques. 20. Were they engaged in making these plows in the winter?

Ans. I think they were not.

Ques. 21. Are you sure that you saw Mr. Gilmore working on these plows as early as 1848?

Ans. I am.

Ques. 22. Can you swear positively to that date?

Ans. I can to the best of my recollection.

Ques. 23. From what you know of James Gilmore, was he above the average in ingenuity?

Ans. I believe he was for his age.

Ques. 23. Was he or was he not larger than most boys of his age at fourteen or fifteen years?

Ans. I believe he was rather a large growth boy for that age.

Ques. 24. If you did not know his age, how old a man would you have thought him to have been when he left Smyrna in 1853?

Ans. I should suppose from his appearance that he was eighteen or nineteen years old when he left Smyrna.

Cross-examination by L. L. LEGGETT, Esq.:

Ques. 1. Have you always from boyhood been accustomed to the use of plows and other farming implements?

Ans. I have not; my occupation has been carpenter and other mechanical pursuits.

Ques. 2. Have plows ever been the subject of any special attention on your part?

Ans. Not particularly, more than when these double-shovels first came about; they were rather a curiosity.

Ques. 3. Did they strike you so when you first saw them?

Ans. I believe it did somewhat.

594 Ques. 4. Since that time, during the past twenty-five years or so, have you thought much about such plows, or heard anything about them?

Ans. I have seen them frequently since that time through the country.

Ques. 5. Have you a clear and distinct recollection, such as will enable you without doubt or reservation or qualification to swear that you saw such plows as shown in defendants' exhibit "Gilmore Plow" manufactured prior to the year 1850?

(Objected to, the witness having already testified hereon.)

Ans. Yes, sir.

Ques. 6. How many such plows do you suppose that you actually saw made or being made before 1852?

(Objected to as irrelevant and immaterial.)

Ans. Well, sir; I can't answer to any definite number; I saw several.

Ques. 7. In all these places were there only two plow beams, and were these beams bent in rear to form shovel standards, as shown in Gilmore Exhibit referred to?

Ans. That is my recollection; just the two beams bent to put the shovel on.

Ques. 8. Have you ever seen any such plows being made anywhere else than at the shops of Gilmore & Sons?

Ans. I do not remember of seeing any of them made at any other shops.

Ques. 9. Will you be positive?

Ans. I will be positive that I don't remember of any other.

Ques. 10. In the plows you saw prior to 1850, are you sure that the plow beams began to diverge at or near the clevis, or may there not have been a single undivided beam extending back a foot or more from the clevis before the two beams began to diverge?

Ans. My recollection is that in these plows they were joined together at the point.

JOHN M. BENDURE.

595 *Testimony of William Romans.*

WILLIAM ROMANS, of lawful age, being first duly sworn, as hereinafter certified, deposes and says as follows;

Ques. 1. State your name, age, occupation, and place of residence.

Ans. Name, William Romans; age, 44 years; occupation, house carpenter; residence, Londonderry Township, Guernsey County, Ohio.

Ques. 2. How far do you live from Smyrna, Harrison County, Ohio?

Ans. Ten rods; the two counties join at Smyrna.

Ques. 3. Give an account of your place of residence between the years of 1845 and *and* 1855?

Ans. The year 1845 my parents resided in Smyrna; in the beginning of 1846 they moved to the town of Freeport, Harrison County, Ohio, and I remained there with them until the April of 1850; then I returned back to Smyrna, and remained there until the spring of 1851; I then

went from there to Hopedale, Harrison County, Ohio, and remained there until the winter of 1853; then back to Smyrna, and remained there till 1855.

Ques. 4. Where did you live in Smyrna in 1850?

Ans. I did not live in the immediate town, but a short distance from town.

Ques. 5. Did you know, while living at Smyrna at this time, Frank and James Gilmore?

Ans. Yes, sir; I did.

Ques. 6. In what business were they engaged?

Ans. Blacksmithing.

Ques. 7. Do you remember whether they were engaged in making any kind of agricultural implements; if so, what?

Ans. Yes, they was. They made hoes; and I was in there once and saw them making a double shovel iron plow.

Ques. 8. Please describe that plow?

Ans. As near as I can recollect, there was two beams of iron fastened together at one end, and diverging backwards, and curving downwards, to form the standards for the shovels.

596 Ques. 9. I now show you a sketch, marked Defendants' Exhibit Gilmore Plow, and ask you if the plow you refer to differed from the one shown in exhibit?

Ans. Not to the best of my recollection.

Ques. 10. Are you sure you saw this plow, which you saw Mr. Gilmore making, in 1850, rather than in 1853, when you again lived in Smyrna?

Ans. I am sure it was in 1850.

Ques. 11. Do you remember in what part of the year it was?

Ans. In the fore part of the season; some time before harvest.

Ques. 12. When did Mr. Gilmore and his family move away from Smyrna?

Ans. In the fall of 1853.

Ques. 13. Do you remember any incident that would fix the date?

Ans. Yes. I was working about two miles on the road leading from Smyrna to Londonderry; as they went past, James Gilmore called and bid good-bye to John W. Bendure and myself; we were working on a house.

Ques. 14. From what you remember of James Gilmore, how old a man should you say he was when he left Smyrna in 1853?

Ans. I would suppose he was a man 21 or 22 years of age.

Cross-examination by L. L. LEGGETT, Esq.:

Ques. 1. How near was this plow finished that you saw being made in the shop of Gilmore & Son at Smyrna?

Ans. The beams were made and they were fastening the handles on; as near as I can recollect.

Ques. 2. Were the beams already united at the clevis?

Ans. They were in the position as shown in sketch; I think they were.

Ques. 3. Did you ever see any other plows like that at Gilmore's shop?

Ans. I don't recollect of seeing any but the one.

Ques. 4. Did you see that one after it was finished?

Ans. I am not sure that I did.

597 Ques. 5. From that time till 1854, did you see any more such plows anywhere?

Ans. I have no recollection of seeing any in that time.

WILLIAM ROMANS.

United States circuit court, district of Kentucky. In equity.

W. W. LEGGETT ET AL. }
v.
B. F. AVERY ET AL. }

It is here stipulated and agreed between the counsel for the respective parties that Wm. Romans may take the stand for the respondents, and explain relative to the conversation testified to by Mr. Hollett, Mr. Hubbell, and Mr. Leggett.

At Smyrna, Ohio, this 2nd day of March, 1877, before Arthur Stem, notary public; present W. W. Leggett for complainants, and Arthur Stem for defendants.

Testimony of William Romans.

WM. ROMANS, being produced and duly sworn, deposes and says:

Ques. 1. I now read to you the depositions of William Hollett, A. F. Hubbell, and W. W. Leggett, given this day. Please state what you meant. Did you understand the conversation, or not, to refer to the invention of these plows, rather than seeing them made?

(Objected to, as the witness has never yet testified anything about who invented the plow.)

Ans. What I meant was that they, George B. Smith and Jesse Romans, would recollect about Gilmore's making the plows here; and I just spoke in this way, that I would almost rest my evidence on what those two men would say; that is as near as I can recollect it.

Ques. 2. Have you received any communication from either of those men? If so, what was the purport of it?

Ans. Yes, sir; from Jesse Romans, and I have the letter here, and I read it as follows:

598 CORDINGTON, *Feb.* 24, 1877.

Mr. WM. ROMANS:

I feel very certain that the Gilmores never invented an iron shovel plow while they worked in Smyrna; nor I do not remember of seeing any, only those made in Cadiz.

JESSE ROMANS.

That is the letter.

Ques. 3. Do you feel any less certain that your testimony to the effect that these plows were made here by the Gilmores is correct than you did at the time you gave it?

Ans. No, sir.

Cross examination waived by Mr. Leggett.

WILLIAM ROMANS.

599 DISTRICT OF KENTUCKY:

I, Samuel B. Crail, clerk of the circuit court of the United States for the district of Kentucky, at Louisville, do hereby certify that the foregoing is a true transcript of the record of the proceedings of the court in the case mentioned in the caption hereof.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 30th day of May, A. D. 1879.

[SEAL.] SAM'L B. CRAIL, *Clerk.*

(Indorsement on cover:) No. 755. Wells W. Leggett and Leverett L. Leggett, appellants, vs. Benjamin F. Avery, Samuel Avery, and George Avery. Kentucky C. C. U. S. Filed 12th May, 1879.

Robert Clarke & Co., Printers, Cincinnati, O. [*Jan.*, 1880.

IN THE

United States Supreme Court.

OCTOBER TERM, 1879.

Wells W. Leggett and Leverett L. Leggett

No. 755.] *vs.*

B. F. Avery and Sons.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

BRIEF FOR APPELLEES.

JOHN E. HATCH, Solicitor.

Robert Clarke & Co., Printers, Cincinnati, O. [*Jan.*, 1880.

IN THE

United States Supreme Court.

OCTOBER TERM, 1879.

Wells W. Leggett and Leverett L. Leggett

No. 755.] *vs.*

B. F. Avery and Sons.

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BRIEF FOR APPELLEES.

The appellants have appealed from a decree of the United States Circuit Court for the District of Kentucky, entered by the late Judge Ballard, dismissing, for reasons given in his written opinion, a bill filed there by appellants as complainants against appellees as defendants, for the alleged infringement of a patent.

His honor, Justice Harlan, appears of record (p. 5) as of counsel for defense, though he took no part in the preparation or argument of the case.

This is a test case upon the patent, as several other suits are pending in other circuits, and as there is no complicated mechanics involved, it has been agreed, for the purpose of an early hearing, that the case should be submitted on printed briefs, under the twentieth rule.

The appellants' brief has been handed me. As it makes no assignment of errors, as required by the twenty-first rule, section second, and reviews at length all the points raised by the pleadings, I am at a loss what course to pursue in reply. But as all parties desire an adjudication on the merits of the patent, I shall discuss fully two grounds—the one a matter of law, the other of fact—upon which the Court below held the patent invalid, and shall refer briefly to the other points in the case, upon which also the Court held the patent void, so that your Honors can consider these other questions if there should be found any occasion for such consideration, after the examination of the two first stated.

THE TWO DEFENSES.

1. *That the reissued letters patent sued on are void, because the alleged inventions described in the same and claimed in the several claims thereof were expressly disclaimed by Slemmons before the extension of his patent as a condition precedent of such extension, and that the patent was not extended as to such parts, and could not afterward be, in effect,* EXTENDED *by reissue.* (Ans., p. 9.)

2. *Because the device described and claimed in the patent sued on was before the alleged invention of said Slemmons, the patentee, and more than two years before his application for a patent therefor in public use, and on sale at Smyrna, Ohio, and neighboring places by Frank and James S. Gilmore and others.* (Sup. ans., p. 12.)

FIRST.

The reissue is for matter previously disclaimed as a condition precedent to an extension.

To understand their defense fully, the peculiar history of this patent in the Patent Office will need to be considered.

Matthew G. Slemmons, of Cadiz, Ohio, who obtained the original patent, in his first application, filed January 20, 1855, states in the preliminary part of this specification (p. 104):

> "*I hereby disclaim the original invention of the double shovel plow*, but claim to be the inventor of the following new and useful improvements thereon, to wit:
>
> "1st. The entire construction thereof of wrought iron and steel, except the holders of the bands which are covered with wood.
>
> "2d. The continuous and solid wrought iron double beam.
>
> "3d. The guard; which is closed down upon the shovel share at the end of each beam.
>
> "4th. The notch in each share, thereby forming a shoulder on two sides of the beam to prevent the shovel share from moving or turning sideways.
>
> "5th. The handles to each beam made of two wrought iron rods, so adjusted as to brace each other, thereby combining strength and durability with lightness.
>
> "6th. The lower rod of each handle, connected with the beam by an open mortise one inch and a half in length, and attached by a bolt through the beam and secured by a nut, and the upper rod of each handle connected with the beam by the cross brace, which is round, and on which said rod turns, thereby enabling the plowman to adapt the handles of the plow to his stature, by elevating or depressing the same."

Having described his invention more minutely, he sums up with the following claim (p. 105):

> "What I claim as my invention and *improvement on the double shovel plow*, and which I desire to secure

by letters patent is the construction of the entire plow of iron and steel, the continuous and solid wrought iron double beam, the fastenings and security of the share by the guard and notch, the combination of the braced wrought iron handles, securing thereby lightness and strength, the connection of the handles to the beams of the open mortise and round brace, thereby enabling the plowman to adjust and adapt the handles to his stature, constructed, arranged, and operating in the manner and for the purpose substantially as above set forth."

On the same day this application was sworn to, Elijah Laizure, a blacksmith residing at Cadiz, mailed to the Patent Office a protest against the grant of the patent to Slemmons on the ground that he was the inventor and not Slemmons. A month later, Laizure wrote to the office that the matter had been adjusted between himself and Slemmons and he would withdraw his protest. (p. 107.) In this settlement Slemmons recognized Laizure's rights by agreeing to assign half the patent to him, if he got one. (See contract, p. 131.)

The question of Laizure's joint inventorship will be treated of later.

February 3, 1855, the application of Slemmons was rejected by the office, on the ground that it showed no invention over the art as it then existed, and reference was made to the patents of Mims, Pagett, and others.

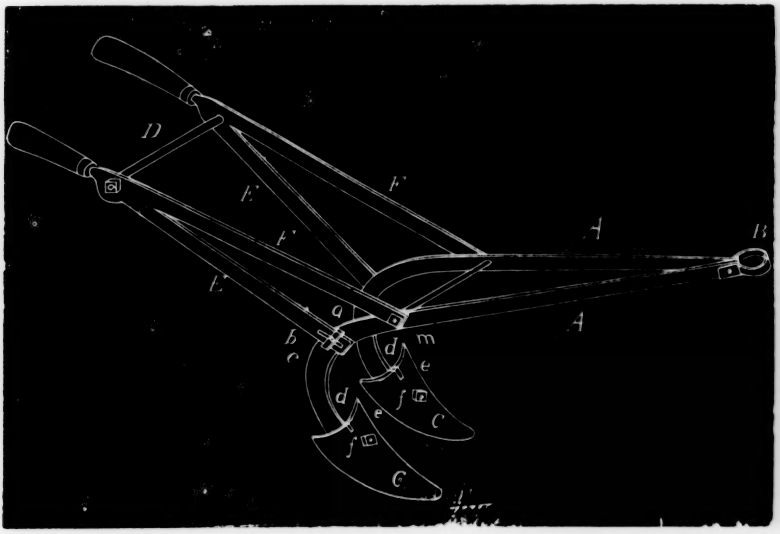
From this day Slemmons and Laizure combined their efforts and continued to make and sell the plows, doing quite a good business as appears from their testimony in the record, and acquiescing in the decision of the office that rejected Slemmons' application, making no attempt whatever to push forward the application. Over five years elapsed with nothing whatever done or attempted in the office. The plows were generally made and sold by the trade, when, on June 20, 1860, Slemmons sends in to the Patent Office a new petition, oath, and specification. (pp. 107, 108.) Here he states in his preamble: "My invention consists in the *particular arrangement of the several parts*, in the manner and for the purpose hereinafter described."

He then describes the parts, and particularly a peculiar manner of securing the adjustable handles and the notched shovels to the plow beams.

Having completed his description, he says:

> "I do not claim any one part of the plow, nor the operation of any one part of the same; but, what I do claim as my invention, and desire to secure by letters patent, is: the arrangement of the two curved shoulder beams *A A*, a clevis *B*, transverse bar *D m*, slotted, adjustable, forked handles *E E b*, and notched and mortised handles, *C C c*, in the same manner and for the purpose described."

The drawing was as follows:



This application was examined by the proper officer, and, being limited to the particular arrangements of parts, with the notched and mortised shovels and the slotted and adjustable handles, was allowed, the question of abandonment, seeming to have been overlooked.

The original patent thus allowed is found on pages 7, 8, 9, and the most rigid examination of it will fail to show any invention suggested or intimated, except the very limited one above given in the claim just quoted.

This fact, taken in connection with the words used in the beginning of the first application, "I HEREBY DISCLAIM THE ORIGINAL INVENTION OF THE DOUBLE SHOVEL PLOW," shows that Slemmons never intended to claim more than he originally got. In view of the prior devices, he was glad enough to get that.

THE FIRST REISSUE.

Thus the matter stood nine years, until W. P. Brown, of Malta, a manufacturer, having obtained control of the patent, conceived the idea of reissuing it so as to cover any double shovel plow, and of making the trade pay tribute. A reissue was applied for, and with apparently no examination as to the art, for no references are cited, on June 22, 1869, it was allowed.

Mr. Brown evidently doubted the validity of this patent, for we find him, while the case is before the office, writing to his attorneys to know "whether this reissue will stand a good test at law." (p. 115.) They must have advised him to handle it tenderly, as there is no evidence of any suits begun, though the reissued patent was at once assigned to Mr. Brown, and all the manufacturers were then and had for many years been making double shovel plows with the two beams diverging from a common point, and their rear ends bent to form shovel standards. No one except those licensed used the peculiar notched and mortised shovels and slotted adjustable forked handles, which were conceded to belong to Slemmons. (For this reissue, see p. 80.)

THE EXTENSION.

On February 23, 1874, some months before the expiration of the original term of the patent, the patentee made a bargain with Leggett & Leggett, the present complainants, then solicitors of patents in Washington, by which

he agreed to have an application for an extension of the patent made in his own name through them, they to assume all expenses and responsibilities and the entire right in the extended term to be vested in them; for this they were to pay him, upon the granting of the extension, two thousand dollars. The application for the extension was made by Leggett & Leggett. It was opposed by manufacturers interested in the manufacture and sale of these implements. The opposition showed so conclusively to the Commissioner that all the substantial features claimed in their reissued patent were old, except the arrangements for adjusting handles, that he was obliged to so find in his opinion upon the extension, and to refuse the extension of all claims except the fifth, which was for the adjustable handles, and which was not considered of sufficient importance by the opposition to be worth while making any objection to.

A formal disclaimer of all that part of the said invention covered by the letters patent that is embraced in the first, second, third, fourth, and sixth claims, was thereupon filed by Leggett & Leggett in the name of Matthew G. Slemmons, the patentee. (p. 281.)

This opinion of the Commissioner was dated October 5, 1874; the extension took effect from October 9, 1874; the assignment of the extended term from Slemmons to Leggett & Leggett, which was made in February, 1874—that is, some months before the extension was applied for—was not recorded until October 12, 1874. Immediately after the extension was granted, upon the same day that the extension went into effect—that is, the 9th day of October, 1874—application was made by Leggett & Leggett, as assignees of Slemmons, for a reissue of the patent, with the present claims, covering the very subject-matter which they had been compelled to disclaim, as a condition of securing the extension, and of which they had filed a formal disclaimer. This reissue was refused by the examiner as being *for the same invention that had been specifically and formally disclaimed* as a condition of the extension, he saying:

"Now, while it is admitted that these new claims differ in their wording from the claims upon which the extension was refused, on reference to patents of Pagett, March 30, 1852, Edwards, September 19, 1846, and Mims, December 23, 1841, it is believed that their restoration to the patent by reissue, as now asked, *would be in direct opposition to a fair and reasonable interpretation of the Commissioner's decision*, except as to the fifth claim now embodied in the fourth." (p. 127.)

Another effort was made by the counsel, now complainant, but the examiner, Mr. Brainard, again refused. (p. 127.) So the matter continued until the Commissioner, General Leggett, resigned, after which, by his successor, the examination was ordered to be proceeded with, and the present patent is the result.

To the credit of my distinguished opponent be it said, that, while he was Commissioner, he saw to it that the claims now in controversy should not be extended or granted over again by way of reissue.

This being the state of facts, I ask the Court to compare with me the two sets of claims—those disclaimed and those afterward reissued—and see if they are not, in effect, the same; and then consider whether, being the same, they could be lawfully allowed:

Claims disclaimed.

1. Two converging beams *A A*, each one of which has a shovel standard *A'*, formed by bending its rear end substantially as described.

2. Converging beams *A A*, connected together and constructed with curved shovel standards *A' A'*, upon them substantially as described.

3. The union of the front ends of plow beams, which have their rear ends bent to form shovel standards, by means of a clevis or device by which the team are hitched to the implement, substantially as described.

4. The converging beams *A A*, having shovel standards *A' A'*, formed on them, in combination with handles *F F*, and handle supporting braces *E E*, substantially as described.

6. Constructing of one piece of metal a plow beam *A*, and a curved shovel standard *A'*, with a shoulder *d*, formed on the latter, substantially as described. p. 281.

The patent as extended after these were disclaimed, was:

"In combination with the foregoing, the manner, substantially as described, of adjusting the handles *F F*, and securing them to the beams at any desired angle." p. 82.

Reissued claims now sued on.

1. Two diverging beams *A A*, that have their rear ends bent to form shovel standards, the said beams being fastened rigidly together, substantially as described, at and springing from the point of attachment for the draft.

2. Two diverging beams *A A*, that have their rear ends bent to form shovel standards, and their front ends fastened rigidly together, and merged into a device, substantially as described, whereby the plow may be attached to the draft. p. 85.

Present third claim not in suit here is.

3. "The combination, substantially as described, with the two plowbeams *A A*, of the handles *F F*, and adjustable handle-supporting braces *E E*." p. 85.

THESE SETS OF CLAIMS CONSIDERED.

The examination of these two sets, side by side, show clearly that the two claims now sued on, are just the same and for exactly the same device, as the first three claims that were disclaimed.

Each one of the five, when construed with its necessary connections, is for the two beams, their rear bent to

form shovel standards, and converging toward the front where they are united and the draft attached.

You may say that the front is a clevis, or that the two beams are merged into a device for attachment. It makes no difference, as in the original only one form is shown—a simple eye for attachment. They are both intended to cover the diverging beams united at one end, curved to form shovel standards at the rear. Therefore, complainants have claimed by reissue just what they were compelled to disclaim to obtain any extension at all. It was in the power of the commissioner, now my learned opponent, to extend the patent as it was, or to deny any extension at all, or extend it as to part. This power was vested in his sound discretion by law. His decision was final and conclusive. There was no appeal. He might decide rightly or wrongly, but *when the decision was made and the day of expiration had passed, there was no power of correction.* He and his assistants believed these claims were void, and that they were an unjust menace to the manufacturer.

In the exercise of the authority vested in him, he compelled Messrs. Leggett & Leggett, the complainants, as a condition precedent to the extension of the claim for the adjustable forked handles, etc., to disclaim the rest. They then, in the name of Mr. Slemmons, disclaim all the rest of the patent, making Slemmons say also: "*As I do not* DESIRE *to hold by virtue of said letters patent any of that part of the invention claimed in claims one, two, three, four, and six, I therefore disclaim,*" etc. (p. 281.)

This was filed October 9, 1874. The original term of the patent having meanwhile expired, the application for reissue is sworn to, October 14, 1874, in Johnson county, Iowa, in an oath prepared by complainants, in which Mr. Slemmons is made to swear that this is without fraudulent or deceptive intention.

Allowing for the time of transportation from Washington, this application for reissue must have been penned at the same time as the disclaimer.

COULD NOT RESERVE THE RIGHT TO REISSUE.

But my learned friend says, in his brief, "they reserved the right to reissue in proper form." They could not reserve the right to take out by reissue the same claims, substantially, that they were compelled to disclaim as a condition precedent to any extension at all.

Undoubtedly, as to the matter covered by the claim that remained after the disclaimer, they had a right to reissue, but not to include what was disclaimed. It should be borne in mind also that the patent, as it existed after the disclaimer was filed, and as it would be now with the first two claims declared void, coincides with the statements of invention written out by Slemmons in both his first and second applications, and before the patent fell into the hands of speculators.

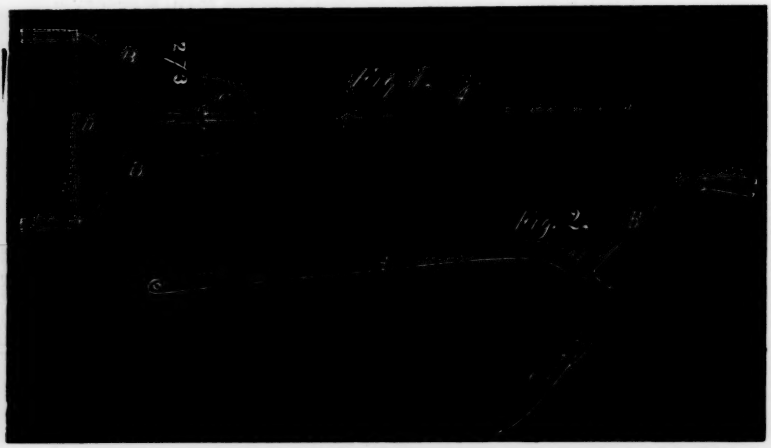
I quote again his original words: "*I hereby disclaim the invention of the double-shovel plow.*

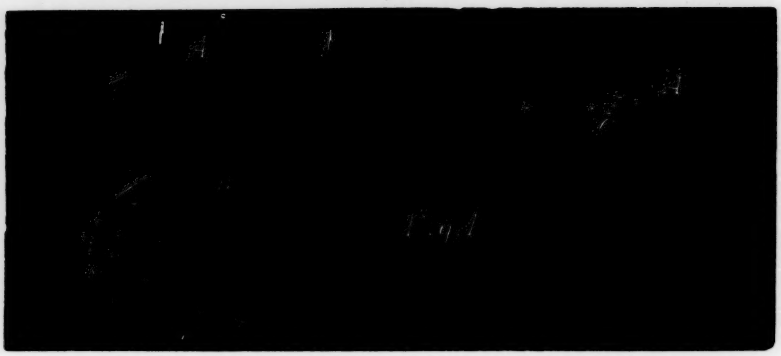
One word more on this point, though perhaps it would be more appropriately considered under another head.

The action of the commissioner *in compelling the disclaimer* WAS RIGHT.

The patent granted W. F. Pagett, March 30, 1852, (p. 274), was in itself a sufficient reference. It shows an iron beam shovel plow, the rear bent to form shovel standards, the front terminating in a clevis or point of attachment, and in the specification the inventor says: "On each side of the beam and sheath may be attached a shorter piece, corresponding in shape with the first mentioned beam and sheath, thus making three sheaths, which, with the addition of three small shovels, will answer the purpose of a cultivator; *to make a double-shovel on this plan, the main beam and sheath, and the one applied, must diverge equally from the line of direction or front of the beam, and a brace must pass from one to the other of these sheaths, about ten inches above the attachment of the shovels.*"

Figs. 1 and 2 show this as a single plow, and the second sketch shows it as it would be doubled according to his direction.





But were the decision of the commissioner wrong, still I submit that after the patent had expired he could not reissue it to cover any thing that was disclaimed, as the matter was not in the patent to reissue, it having been made public by disclaimer. Slemmons disclaimed, not because he was compelled to, if we are to believe the statements of the paper itself, but because he "*does not desire to hold that part of the invention.*"

It appears that all Slemmons' interest in the extension was the sum of two thousand dollars, that he was to get from Leggett & Leggett, if the application was allowed, and the Commissioner thought this was reasonable remuneration for the claim left.

But he certainly would never have extended these present claims, and put all the manufacturers of agricultural implements under payment of royalties to Messrs. Leggett & Leggett for seven years upon this article, in order that Slemmons *might get the small sum of two thousand dollars.* Your Honors will remember that the double shovel plow is as old as the process of cultivating corn by machinery, and dates with the planter, or earlier. This matter of remuneration was considered by the Commissioner, and it was because all the patent, except the narrow claim to his peculiar handles, was disclaimed, that the two thousand dollars was considered a sufficient remuneration. For your Honors will bear in mind that the law provides that the extension *must be for the benefit of the inventor*, and not an assignee.

This Court, in *Dunbar* v. *Myers*, 94 U. S. 193, holds that "a disclaimer when recorded *becomes a part of the original specification*, and must be taken into account in construing the patent."

It has been held in one or two cases on the circuit, that where, in the grant of a patent, a disclaimer is wrongly enforced by the office, it is a matter that may be corrected by reissue.

But I believe the intent of the law to be different where, as in this case, the party files the disclaimer as a condition precedent to the extension of the remainder. Because the commissioner having it in his discretion to extend the patent or not, as he thinks best, considering the interest of the public and the party, his decision is absolutely final. The law provides for no appeal here. But if a patent is refused in the office when applied for, the law provides an appeal in the nature of a bill in equity for the grant of the patent.

In the case of *Wicks* v. *Stevens*, 2 Woods C. C. 312,

Mr. Justice Bradley holds that when the application of the device to stationary as well as portable presses had been first claimed in the application, and then abandoned during the proceedings in the office, the party could not afterward legally reissue the patent to cover that which he had then disclaimed—that the patent having been reissued so as to apply to stationary presses was void.

After this disclaimer becomes a part of the specification by the will of the party, is it not introducing new matter to ask in the reissue for combinations that have been expressly disclaimed? I think there could be no doubt of this.

Since the two decisions of *Gill* v. *Wells* and the *Corn Planter case* (the latter reported last, though decided first), it has been discussed very much on the circuit whether the one overrules the other, and, if so, which overrules. It has generally been concluded that, rightly considered, there is no conflict between them.

But, by the doctrine laid down in either case, is not this reissue void—not only as a reissue of an extended patent that, at the time of the extension, showed no such invention as the combination of these two diverging beams, united at one end and bent at the other, either by indication, suggestion, or implication, but also as one that, in either original application, neither indicates nor suggests such a combination as any part of the invention for which a patent is desired?

I have been unable to find any case, either in the Supreme or Circuit Courts, or in the English practice, where just the question at bar has arisen. I believe no one has before been found willing to present to a court the proposition that it is lawful for him to obtain an extended term of his patent by reissue. The question as to whether or not there was actual fraud in the proceedings before the office I do not present, as I believe it is not necessary to the success of my case to discuss that question.

JUDGE BALLARD'S DECISION.

On this whole question, the Court below, the late Judge Ballard, decided the case in our favor, using the following language:

"*Fifth.* I am of the opinion that the reissued patent of November, 1874, is void, because it embodies a different invention from the patented invention which was extended, and because it embraces as the invention of the patentee what he had disclaimed as a condition precedent to the extension of his patent.

"My opinion is that, whilst the Commissioner of patents may, through the process of reissue, correct any error committed by himself in the granting of original patents, such as the wrongfully requiring of the patentee to disclaim what he had really invented, he has no such power in respect to an extended patent; he has no power *to extend a patent after it has expired*, and though he may, by means of a reissue, allow a patentee to correct inadvertencies and mistakes of an extended as well as of an original patent, he can not, under the guise of a reissue, reverse a decision made by himself on the application for an extension."

In accordance with the intimation given by his honor at the close of the opinion, that as the matter had not been very fully discussed at the hearing, he would allow a rehearing, application for rehearing was made and allowed. (p. 19.)

On full reargument, his honor being still of the same opinion, an order was entered dismissing the bill. (p. 19.)

This case does not, therefore, come before your honors partly considered; but after two careful considerations in hearing and rehearing by one of the ablest judges that has honored the bench in our circuit.

The opinion given on page 21 is a copy of his honor's notes, prepared after the first hearing, and before the rehearing.

SECOND.

THE SLEMMONS ALLEGED INVENTION IS ANTICIPATED BY THE GILMORE AND OTHER USES.

The Slemmons alleged invention is anticipated by the Gilmore and other uses.

Under this defense, I shall refer especially to the public manufacture and sale of these plows by James S. Gilmore, of Smyrna, Ohio, and the public use by others of plows so made and sold.

This defense was fully pleaded. (See supplemental and amended answer, p. 12.)

Slemmons swears that he made the invention during the winter of 1852–3 (p. 58), and that he made his first plow in the summer of 1853, at Cadiz; and the able counsel for appellants, on pages 8 and 9 of his brief, presents a full argument to support this date.

Gilmore was making these plows at Smyrna in 1848, and from that on until he left the State to go to Illinois, November 15, 1853.

The following is the sketch of the Gilmore plow. It is known throughout the record as "Defendant's Exhibit Gilmore Plow." (p. 284.)

A moment's examination of the sketch, and compari-

son with the drawing of the patent (p. —, brief), will show that it has every thing shown in the patent or referred to in the original application, except the adjustable handles and the notched shovels, just the things, and the only things, that Slemmons originally claimed as new with him, and just the things defendant does not use.

Now, Smyrna and Cadiz are both in Harrison county, Ohio, about fifteen miles apart. Cadiz is the county seat, and Smyrna a village far back in the county, the center of a fine agricultural community. Gilmore was the village blacksmith, accustomed to do repairs for the farmers. They had used throughout the State for several years a very similar plow, known as the wooden double-shovel plow, consisting of two beams, bolted together at the front, extending backward in a V form, and the rear of each beam had a shovel secured to a wooden standard and mortised to the beam, and held by a brace, and with handles like Exhibit Gilmore. It was the present plow *made from wood*.

Slemmons admits the use of these old plows—wooden plows. It is a fair question for argument, whether the change of material would be invention. But we now refer to these to show the source of the Gilmore plow. It was from repairing these that he got the idea of making his plow of iron, so as to have a curved beam, instead of a joint held by a brace.

The fame of these Gilmore plows went about the neighborhood, and it was undoubtedly from hearing what Gilmore had done that Slemmons was unwilling to urge his claim, when he was rejected in 1855. Afterward, having found an advantage in the adjustable handles and notched shovel, he patented *these parts only*.

The whole record of this case indicates unmistakably that this is the real history.

THE GILMORE EVIDENCE.

I will now give briefly the substance of the Gilmore evidence, referring to the record in each case, where it can be examined more in detail.

GILMORE, of Mercer county, Illinois, a blacksmith and machinist, testifies (p. 283) that he formerly lived in Smyrna, Ohio; that he left there on the 15th day of November, 1853, and has never resided there since; that, while he lived there, he and his father were engaged in blacksmithing, and, among other things, in making double-shovel plows; *that, while there, they made and sold double-shovel iron beam, curved-standard plows, precisely like the Slemmons, commencing to make them in* 1847, *and sell them in* 1848; that they continued to sell them from that time forward, until they left Smyrna. He refers to various persons to whom such plows were sold, or who knew of their manufacture and use; he refers to Elias J. Phipps, John Bandure, and Williams Romans, as persons whose names he could remember who would know of the sale and use. All these men reside in Ohio. They are all called as witnesses, and independently testify to the same facts. Aside from his memory as to the date of their removal from Smyrna, he is positive that he commenced selling these plows the year before some parties from Smyrna started for California, which was in 1849. He sold one to Elias Phipps, who started for California in 1849, but afterward returned. This date is afterward fixed by record evidence. He continued the manufacture of these plows for some time after he removed to Illinois. He has never been in Smyrna since his removal, and has had no opportunity for collusion with other witnesses called to corroborate him.

It is stipulated by the complainants (p. 297) that Frank Gilmore, the father of this James S. Gilmore, would also testify that they moved from Smyrna to Illinois in 1853; that, while at Smyrna, he and his son were engaged in business as blacksmiths; that his son began working in his shop at twelve years of age, was quite ingenious, and had almost entire charge of some departments of work; that, while at Smyrna, *they made and sold iron double-shovel plows, with beams united at, and diverging from, the clevis, and bent downward to form standards for the shovels;* that he thinks they did so for several years before moving

to Illinois; and that he remembers selling one to John C. Phipps, of Smyrna, and also to Charles Michener.

DANFORTH (p. 293) is called to fix the date of Gilmore's removal from Smyrna to Illinois. Gilmore had testified that after leaving Smyrna, he went, by way of Chicago, to Rock Island, Illinois; that from Chicago he went by railroad to Sheffield; that the railroad was not constructed beyond there, and he was obliged to proceed the rest of the way to Rock Island by stage. Danforth testifies that from 1851 to 1854 he was the editor of the Rock Island *Republican;* that the paper was then changed to the Rock Island *Daily Argus*, and he continued as its editor. That the Rock Island and Pacific Railroad was first completed as far as Rock Island the 22d day of February, A. D. 1854; that passenger trains were running as far as Sheffield in November, 1853. He produces an article from the pages of the Rock Island *Republican*, of March 1, 1854, which he wrote himself, and which gives a full account of the progress of the railroad with the various dates.

ALEXANDER (p. 294), of Cassville, near Smyrna, testifies that in and prior to 1852, he was living on his father's farm at Cassville, Ohio. That in 1852 he first used a double-shovel plow, with iron beams, having curved standards riveted together in the manner recited by the claims here in controversy; that the plow was on his father's farm for some years before that, and he remembers it being used there by James Kirkpatrick before he used it. He fixes the date by the fact that a barn was built upon that farm in the spring of 1853, and that he himself used this double-shovel plow in the orchard near the house, a year before the barn was built.

QUILLAN (p. 300) testifies that he worked for James Edwards, near Franklin, Harrison county, Ohio, in the summer of 1850; that on the 15th of August of that year he married a sister-in-law of Edwards, and then moved to Cadiz, Ohio. That James Edwards had a plow, which he describes as being precisely like the one in controversy, which he himself used upon Edwards' farm in May and June, 1850. Is perfectly positive about the dates and the

character of the plow. He produces his family Bible with the record of the marriage, August 15, 1850, and swears to its correctness.

E. J. PHIPPS (p. 304) testifies that in 1849 he was living with his father in Smyrna, helping his father to farm, and also clerking in his store; that his father had at that time a plow like the Gilmore plow, and that in that year (1849) he used it upon a certain piece of land which was rented by one Abijah Matthews. He left for California in the spring of 1850. He returned in 1852, but went into a store, and did no farming after that until 1858. He fixes the date of his going to California by a receipt for his passage, which he produces, and which is dated March, 1850. He also fixes the date at which he worked when this plow was rented of Matthews by entry in his father's old books, which he also produces. The entry bears date September 30, 1849, and is a credit for rent on that field. He remembers to have seen these plows used by others in 1850 and 1852, and from that time on, but used none himself after 1850, to 1858. His father was the John C. Phipps whom Gilmore refers to, as one of the persons to whom he remembers selling one of these plows. He also testifies that while he can not be positive as to where his father purchased the plow, he thinks it was purchased of the Gilmores, who left for Illinois in 1853. He thinks the Gilmores were making these plows two or three years.

BENDURE (p. 308) testifies that he lived at Smyrna from 1838 till 1864; that he knew both Frank and James Gilmore when they lived there, and was frequently in their shop; that they worked a good deal upon shovel plows, both single and double; that they made double-shovel iron plows, which were two beams of iron connected at the front point and separated as they went back, and a curved leg or beam, curved downward to fasten shovels to. He identifies them as the same as the following sketch, which, it will be seen, is just like Gilmore's; knows they made for

three or four years before leaving Smyrna; remembers that while he was at work at a chaff parting threshing-machine for a Mr. Griffith, in the summer of 1848, he had occasion to go frequently to the Gilmore shop for bolts and irons for these machines, and upon those errands noticed their making the double-shovel plows with iron beams, as described. He says that he is sure that he saw Gilmore working on these plows as early as 1848. He also testifies to the year in which the Gilmore's left Smyrna, and fixes the time as 1853, by the fact that he remembers saying "good-bye" to them when he was at work on a certain job for a Mr. Bethel, which he knows was in 1853.

The complainants afterward called this witness as their own, and endeavored, by a long examination, to obtain his admission that he might have been mistaken as to his dates upon his former examination. They entirely failed in this, the only result being to show beyond question the honesty and candor of the witness.

William Romans (p. 310) testifies that he was living in Smyrna from April, 1850, to the spring of 1851—then removed from there, and resided elsewhere until the winter of 1853; that, while he was living there, in the fore part of the season 1850, some time before harvest, he saw the Gilmores making a double-shovel plow, which he describes as "having two beams of iron fastened together at one end, and diverging backward and curved downward, to form the standards for the shovel." He identifies it as "Defendant's Exhibit, Gilmore Plow, D."

The complainants recalled this witness, as their own, to confront him with a letter from persons to whom he had referred as likely to know about the Gilmore plow, who disclaim any knowledge of them, and endeavor to obtain his admission that he was mistaken. He admits that he had said to complainants' counsel, off the stand, that he was so confident that George P. Smith and Jesse Romans knew about the sale of the Gilmore plows that he would almost be willing to have his testimony stand or fall by theirs.

Complainants' counsel produce the letter which they have procured from Jesse Romans, afterward shown to have been dictated by themselves, saying that he feels very certain that the Gilmores never invented the iron shovel plow while they worked in Smyrna, and that he does not remember seeing any, only those made in Cadiz. This witness, William Romans, says, however, that, even after seeing that letter, he is no less certain that he saw the plows made by the Gilmores, as testified by him in his former deposition.

Appellants' counsel says, in his brief, that Gilmore is not entitled to belief, as he says he heard of the Slemmons patent in 1855, which was before it was granted.

My friend has not read the record correctly.

Gilmore was asked, in cross-examination (p. 291, cross-ques. 123):

"Did you ever hear of a Matthew S. Slemmons as the *inventor of an iron double-shovel plow?*

"*Ans.* Yes, sir.

"*Cross-Ques.* When did you *first* hear that?

"*Ans.* The *first* was in 1855."

The cross-examination was continued and concluded, and in re-examination he is asked (p. 292):

"State the circumstances under which you first heard of the Slemmons PATENT.

"*Ans.* I was approached by a man representing the Slemmons patent. He wanted to sell me the right to make the forked iron beam plow. I refused to buy, as there was no right in it. He wished me, in conversation, to say

nothing of the right with one exception, for which they claimed the patent, and that was the adjustability in widening the plow; that was all the claim he made; he did not claim any thing for fork or curve. I looked his papers over, and that was the only claim he set up. He claimed the movement at front, and slot movement in brace bar: that was the only claim he set up. He wished me to say nothing in regard to the plow, learning where I came from, and my knowledge of the same, that he might be able to do well with the plow. This conversation occurred after I told him I had made the plows in Ohio, and where; it occurred at Millersburg, Illinois."

He was asked in cross-examination when he first heard of *Slemmons*. This he says was in 1855. He was asked in re-examination *what* he heard about the *patent*, referring to an entirely different time and date. There is no connection between the two. His answer on re-examination shows also what I have contended heretofore, that Slemmons only claimed the *improvement* and did not claim the *original invention*.

THEIR DEFENSE TO GILMORE.

To rebut the evidence as to the Gilmore plows the complainants call several witnesses, who testify either that they *did not know* of these plows being made and sold by the Gilmores, or that they did not know of their being made and sold by them until after they were made and sold elsewhere. These witnesses, with scarcely an exception, were so situated that if Gilmore had continued in the business for ten years, they probably would have known nothing about it, and are equally ignorant of every thing else that was done in his shop.

I take them up in their order:

ELIJAH LAIZURE (p. 191). If this witness is reliable at all, his testimony, already referred to, invalidates, beyond question, complainants' patent. He is, however, called by complainants to disprove the Smyrna use. His opportunity for knowing what was done in Smyrna consisted in

the fact that he was in the habit of passing through Smyrna once in every two years, on his way to visit his wife's father, who lived in Licking county, Ohio. The distance from his home to the residence of his wife's father was 110 miles. He can not recollect any time when he stopped in Smyrna over an hour, previous to 1852; he never was there a day at a time. The time when he thinks he stopped an hour was when he was passing through on the stage and stopped for dinner. He traveled forty-two miles that day.

He did not know the Gilmores. The reason he gives for thinking that they did not make the plow is, that he is confident he was the first inventor. He says, in cross-examination, that he would be equally confident that they were not made in Connecticut, or in any other part of the country.

McCormick (p. 138). Lived six miles from Smyrna while the Gilmores were there, and at the time their manufacture of these plows is alleged to have commenced, was eight years old. He did not know the Gilmores, and did not know any body in Smyrna before 1853. He does not know that the Gilmores ever made any such plows. He says that he remembers such plows being used by his father, which were regarded as having come from Cadiz.

Houser (p. 140.) A livery man, and was driving stage through Smyrna in 1848 and 1849, he thinks, and again from July 1852 to some time in 1854. He relies entirely upon his memory for dates. He usually stopped from seven to ten minutes at Smyrna, and when stopping there frequently went into the shop of the Gilmores. He does not remember having seen any iron double shovel plows there, but says he thinks as, up to 1854, he had never been at work on a farm, he would not notice particularly farm implements.

McFadden (p. 143). During the years from 1848 to 1853, resided in Nottingham township, which was six or seven miles from Smyrna; had no business or acquaintance to take him to Smyrna between the years 1848 and 1853; did not know the Gilmores; does not know of their having

made or sold any such plows; thinks the first iron double-shovel plows like the one in controversy which he saw were two which his father purchased of Laizure & Slemmons in 1851 or 1852. [Evidently mistaken. See appellant's brief, p. 8.]

KENNEDY (p. 148). Resided five miles from Smyrna at the time when the Gilmores lived there, and was a blacksmith; says he was not much acquainted with the Gilmores; knew there were such persons carrying on a blacksmith business in Smyrna; is not certain that he was ever at their shop; did not know of their making iron double-shovel plows.

JOHN ROMANS (p. 149). Resided two miles from Smyrna from 1847 to 1853, and knew the Gilmores. On direct examination, he says, in answer to a question as to whether he ever saw or heard of the Gilmores making iron double-shovel plows: "I can not say that I did ever hear of them making any of their own." On cross-examination, he states that *he did know of these plows being sold by the Gilmores*, but that he did not know they were their invention. He is not willing to say that they did not sell them two or three years before they left; can not remember how long it was, but does distinctly remember that they sold them.

HALL (p. 153). A physician. Between 1848 and 1853 he resided at Freeport; was not personally acquainted with the Gilmores, and can not remember whether they made and sold these plows or not. Says on his direct examination, when asked if he would have known it, that his recollection does not serve him as to whether they did or did not make and sell these plows, and *if they had done so he would be uncertain about it*, as he was only attending to his own business. Says it was commonly reported that the Cadiz plows were the invention of Laizure; thinks he first saw the iron beam double-shovel plow somewhere between 1850 and 1854; *thinks it probable that he made them himself as early as* 1852. *Had a shop in Freeport, where he made them;* moved away from Freeport in 1855, and quit that shop about a year before. *Is satisfied that he made these plows as much as two years before he gave up that shop;* thinks that he

remembers Laizure's name in connection with the plow, rather than Gilmore or others who might have been manufacturing them, because it was rumored that Laizure was threatening to prosecute the makers of the plow.

SAMUEL R. SMITH (p. 157). Was a farmer, two and a-half miles from Smyrna, when the Gilmores were there, and sometimes had work done in their shop. It does not appear whether he was in their shop during either the years that the Gilmores claim to have made these plows. He did not know of their making any; *the first plows of this kind of which he knew, he thinks came from Pittsburg, Pa.* Has no recollection as to dates of any thing; declines to give dates or approximate them. He would have been *fourteen years old at the time Gilmore testifies he began to make these plows.*

WILLIAM G. SMITH (p. 160). Was sixteen years old at the time Gilmore testifies he began to make these plows, and lived two miles from Smyrna; knew Gilmore, but usually had his blacksmithing work done at another place; *can not say whether he did or did not know of Gilmore's making any of these plows;* says the first of these plows he knew about came from somewhere else; does not know where; thinks he bought wooden double-shovel plows, one in 1850 or 1851, and another one or two years after the first, and that it was after he bought these that he first saw the iron beam double-shovel plows.

WILLIAM L. SMITH (p. 163). Was FOUR YEARS OLD *at the time Gilmore testifies he commenced to make these plows,* and lived on a farm a mile and a half from Smyrna. *He was ten years old when Gilmore left Smyrna. He did not know of Gilmore making these plows.* The first one of this kind he remembers to have seen was one which his father bought in Freeport when he was nine or ten years old. He thinks it was about three years after this that the Gilmores left Smyrna. If he is right as to the difference between these times, the plow purchased by his father must have been purchased about 1850.

If manufactures and sales testified to by many respectable and disinterested witnesses, whose testimony is perfectly clear, positive, and rational, and who were men of understanding at the time they saw the implements, some of whom made and some of whom used them, can be disproved by the testimony of a person who at the time was a boy of from four to ten years, living on a farm, that he did not know of such manufacture or sale, there are not many transactions as remote or half as remote as these which could not be disproved by not merely one, but a hundred or a thousand such witnesses.

HOWLETT (p. 167) is asked on direct examination: "Did you ever hear of his inventing a double-shovel iron plow?" referring to Gilmore. He answers that he did not. Complainants are careful not to ask him, as they were the preceding witness, whether he knew of Gilmores' making and selling such plows. On cross-examination this witness is asked: "Do you remember of ever seeing any of these double-shovel iron plows in Mr. Gilmore's shop?" He answers: "*Yes; I remember of seeing some at his shop, after I had got mine though.*" He is asked: "You are positive about that, are you?" Answer: "Yes, sir." Question: "Do you remember whether these plows at Mr. Gilmore's shop were made by Mr. Gilmore, and were for sale by him?" Answer: "No; I can not say that they were. I never saw Mr. Gilmore working on any such plow. They were setting inside of the shop. I suppose they were for sale." He testifies that before this he had bought one of these plows of Thomas Green. If he is correct as to this, it is evident that Thomas Green was selling as early as 1852 or the first part of 1853.

STEELE (p. 170). This witness commenced to work as a blacksmith in Freeport in 1853. It does not appear where he lived prior to that time. He thinks the first of these plows which he saw were those for sale by Thomas Green, in 1853 or 1854—is not positive about dates. When asked on direct examination, "Did you ever hear of the Gilmores making any double-shovel iron plows at

Smyrna?" he answers, "*Well, not till recently, unless hearsay.*"

CARPENTER (p. 171) lived during the years in question at Londonderry, four miles from Smyrna. He did not know of Gilmore's making these plows. *It does not appear that he knew Gilmore at all, or was ever in his shop.*

HOGUE (p. 172) testifies that in 1852 he went to live with his uncle, six miles from Smyrna. He was then about twelve years old. He does not remember that he was ever at Smyrna prior to the fall of 1853. In either the spring or fall of 1853, while the barn was being built on his uncle's place, he heard a man say that they were making double-shovel iron plows at Cadiz.

Testimony such as this, that certain parties were living from four to eight miles away and do n't remember to have heard of the use by Gilmore, when that use was so short, is not at all strange. I have no doubt there were one hundred names that might have been called to prove the same. But it is nothing compared to the positive evidence of the eight or ten witnesses who *made the plows or used them*, and fix their dates by unmistakable evidence.

Their own witnesses swear the plows were on sale at Gilmore's shop before they went away. But the stipulated evidence of the elder Gilmore is of itself enough to settle the whole matter. "That they removed in 1853, and made and sold at Smyrna before leaving, double-shovel plows with beams united at and diverging from the clevis, and bent downward to form standards for the shovels." (p. 294.)

This is the whole story, and appellants admit it by stipulation. When read with the evidence of his son, p. 283, it is conclusive of the case.

THIS ISSUE SETTLED BY COURT BELOW.

This is a pure matter of fact. It is not contended by appellants that the plow was different from the one shown in the patent, so far as this case is concerned.

The only question is, were they made and sold by the Gilmores before they left for Illinois. There is much evidence and the stipulation.

This was all carefully considered twice over by Judge Ballard, and he held:

"There is no pretense that Slemmons made his invention prior to 1852, and the evidence that Gilmore made plows embodying all the features of the invention prior to that time, is so strong that I am inclined to think the Court is not at liberty to disregard it." (p. 21.)

His opinion as to this was not changed by the rehearing.

On this issue, appellant's counsel make no issue as to the competency of the evidence, but only as to whether or not the Court below decided rightly or wrongly as to the weight of evidence.

I believe the cases are very rare in which this Court has reversed on the ground that, as to the matter of fact, the Court below decided wrongly as to the weight of evidence, especially after a careful consideration and rehearing.

I submit the case on this ground with great confidence.

THIRD.

No patentable invention.

Considering briefly the other points raised by the case, I believe that the patent discloses no patentable invention, except possibly in the adjustable handles and notched shovels, not involved.

Slemmons admits that he was familiar with the Hall and Spear plow, prior to the date of his alleged invention. (p. 51. Ans. 66 *et seq.*): This plow had an iron beam curved to form the standard for the shovel of the plow. He also admits that he had been for some time familiar with the double-shovel plow. The most that he claims to have done was to substitute the curved iron beam, which was

old, for the wooden beam in the double-shovel plow, which was also old. The divergence from the line of draft was the same: the point of attachment was the same. It is not pretended that the iron beam possessed any other function or additional advantage in the double-shovel plow, from what it did in the single-shovel plow. Slemmons himself says, that the substitution of the iron beam for the wooden one, was suggested to him by the fact that the wooden beams frequently broke.

In question 61, he is asked (p. 57):

> "Your object in changing from wood to iron was to secure greater strength, was it?
>
> He answers: Yes, that was one object, and I got a better plow every way. That was one thing that led me to think about it at first, I believe more particularly than any thing else."

See also answers 63, 64, and questions and answers 9 and 10.

The substitution of one material for another, where no advantage is obtained other than the greater strength or durability of the material substituted, and where the one is well known, for the other, is not patentable invention. *Holbrook* v. *Smith*, 10 Off. Gaz. 508.

Improvements due to change in form or degree are not patentable. *Roberts* v. *Ryer*, 10 Off. Gaz. 204.

Bringing together two old devices in the same way in which analogous devices have before been brought together, where no new operation is given to either by reason of their union, and where each performs only the function which it has performed before, is not patentable invention. *Hailes* v. *Van Wormer*, 20 Wal. 353.

But this case is even stronger than above stated. The Pagett patent shows a single-shovel plow, formed identically like the Slemmons plow, and states that—

> "To make a double-shovel plow on this plan, the main beam and sheath, and the one applied, must diverge equally from the line of direction, or front of the beam. A beam must pass from one to the other of these sheaths about ten inches above the attachment of the shovels."

This describes exactly the Slemmons device.

This patent was issued in March, 1852. Even at that time, Pagett did not claim to have invented this plow, but specifically disclaims it. His patent is for a mode of shifting the handles on this plow.

With the drawings and the descriptions of this patent before him, and the wooden double shovel plow also before him, having its beams rigidly attached at their front end, formed into a clevis arrangement and diverging equally from the line of draft, Slemmons had to do but the work of the ordinary mechanic in following specific directions in the construction of the plow. Not the slightest contrivance was called for; there was no room for design or experiment of any kind; a hundred different mechanics with the same directions and devices before them would have constructed, without hesitation, just such a plow as he now claims.

The very fact, which abundantly appears in evidence, that these plows sprang up in different parts of the country almost spontaneously between the years 1845 and 1855, indicates how simple a matter it was for any blacksmith or mechanic of any kind to substitute the iron beam with curved standard for the wooden beam in the double shovel plow when he was once acquainted with both.

If all the testimony as to prior public use and sales were disregarded, it would require a greater stretch of the patent law than it has ever received in any reported case to construe the work which Slemmons is alleged to have done into patentable invention.

See in this connection cross-examination of complainants' expert, Holmes, complainants' record, p. 68, et seq.

On this point, the Court below says:

"*Fourth.* Considering the state of the art at the time Slemmons is said to have made his invention, I have much doubt whether any thing patentable was invented by him, except what is claimed in his patent relating to the arrangement and adjustibility of the handles. The specification of 1855 does not particularly describe the manner in which the two plow beams are brought and fastened together,

and it certainly does not claim that this manner is new; on the contrary, it declares that an iron clevis is attached to the point of the beams in the ordinary method. I am not prepared to admit that the bringing together of two plow beams which was old, and fastening them by a device which was old is patentable." (p. 21.)

FOURTH.

If either Slemmons or Laizure was the inventor, which I do not believe, it was Laizure, and not Slemmons.

On this point, see the very full deposition of Laizure (p. 182); also the cross-examination of Slemmons.

FIFTH.

Infringement.

There is no pretense that the third claim is infringed. That is admitted by complainant in his brief. In defendant's device, the two beams are hammered together at the point, and the end of the iron thus formed drawn out and turned up into a hook for attachment, instead of having the clevis shown in the reissue. It should be remarked, however, that, in the first drawing, there was no clevis at all.

It is admitted that our plows are formed of two diverging beams, joined in front, and curved in the rear to form shovel standards.

OTHER POINTS.

On the point of abandonment and other points, I refer to the opinion of the Court below.

Respectfully submitted,

JOHN E. HATCH,

Solicitor and Counsel for Appellee.

IN THE

UNITED STATES SUPREME COURT.

October Term, 1879.

WELLS W. LEGGETT, ET AL.
v.
B. F. AVERY, ET AL.

IN EQUITY,
No. 755.

BRIEF OF ARGUMENT.

M. D. LEGGETT,
Solicitor for Complainants.

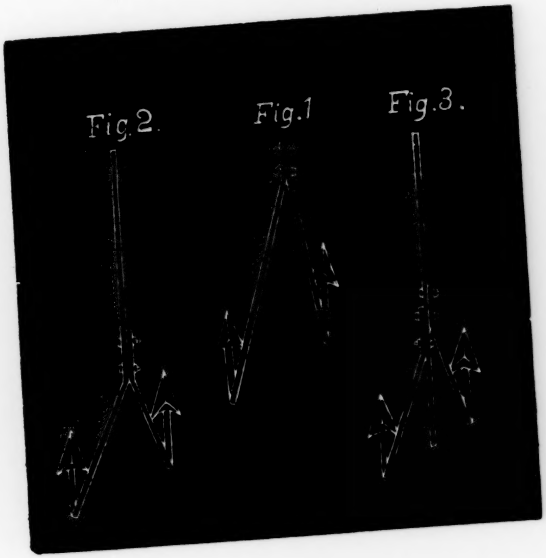
CLEVELAND:
FAIRBANKS & CO., PRINT, 16 AND 18 FRANKFORT ST., BETWEEN BANK AND WATER.
1879.

IN THE

UNITED STATES SUPREME COURT

COMPLAINANTS' EXHIBIT

PAGETT 1.



See Record Page 22

RESPONDENTS' EXHIBIT.

PAGETT 2.

See Record Page 22

UNITED STATES SUPREME COURT.

WELLS W. LEGGETT
AND
LEVERETT L. LEGGETT,
vs.
B. F. AVERY, *ET AL.*

In Equity,
No. 755.

This cause comes up on appeal from the United States Circuit Court, for the District of Kentucky.

The subject matter in controversy is a double shovel plow, and is sufficiently illustrated by the duplicate of Slemmons' original model, filed as a part of his original application in the United States Patent Office, and the defendant's full sized plow, also in evidence.

The complainants are assignees of Matthew G. Slemmons. Said Slemmons filed his application for a patent January 20th, 1855. The patent issued October 9th, 1860. It was reissued June 22d, 1869. Certain claims of the reissue were disclaimed October 5th, 1874, reserving the right to reissue in proper form. It was extended for seven years from October 9th, 1874.

It was again reissued in its present form November 10th, 1874.

The patent has three claims, and the defendants are charged with having infringed the first and second claims only. The following are the first and second claims, and they will be clearly understood by reference to the accompanying drawing, which is copied from the patent:

1. Two diverging beams, A A, that have their rear ends bent to form shovel-standards, the said beams being fastened rigidly together, substantially as described, at, and springing from, the point of attachment for the draft.

2. Two diverging beams, A A, that have their rear ends bent to form shovel-standards, and their front ends fastened rigidly together and merged into a device, substantially as described, whereby the plow may be attached to the draft.

Analytically stated, these claims read:

FIRST CLAIM.

1. Two diverging beams, A A.

2. That have their rear ends bent to form shovel-standards.

3. The said beams being fastened rigidly together, substantially as described.

4. At, and springing from, the point of attachment for the draft.

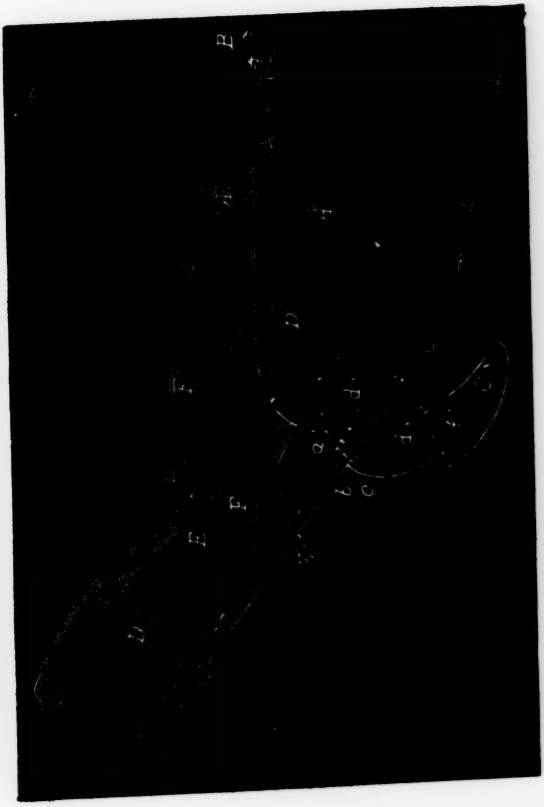
SECOND CLAIM.

1. Two diverging beams, A A.

2. That have their rear ends bent to form shovel-standards.

3. And their front ends fastened rigidly together.

4. Merged into a device, substantially as described, whereby the plow may be attached to the draft.



See Record Page 79

An inspection of the defendants' plow is all that is necessary to show that it contains all the elements of the two claims quoted, combined in the same manner as described and claimed in the patent. The description of the invention in the patent and the two claims, would apply just as literally to the defendants' plow as to Slemmons' model, filed as a part of his application.

The complainants' expert witness, I. V. Holmes, in answer to question 3, says: "Exhibit, defendants' "plow, is substantially the same device as shown and "described in complainants' reissue and model, and "claimed in the two first claims thereof."

The defendant took no testimony whatever to disprove infringement, hence the complainants' testimony on that point stands undisputed.

The defense set up in the Circuit Court may be summed up as follows:

1. Public use more than two years before filing the application for a patent.
2. That the patentee obtained the invention surreptitiously from one Elijah Laizure.
3. That the invention was in public use long before it was conceived of by the patentee.
4. That the invention was not patentable in view of the state of the art at the time.
5. That the reissue is not for the same invention as the original.
6. That the invention alleged to be infringed was disclaimed by the patentee as a condition of securing the extension.
7. That the extension was not for the benefit of the patentee, but for the assignees.

The complainants introduced in evidence the reissue upon which the suit was brought (Record, p. 83), Slemmons' original patent (Record, 78), Slemmons' first reissue (Record, 79), Slemmons' assignment to complainant (Record, 100), a certified copy of the model filed as a part of Slemmons' application for a patent, a double-shovel plow made and sold by the defendants, and the expert testimony of Isaac V. Holmes (Record, 25), proving that defendants' plow was identical with complainants' invention, so far as claimed in the first two claims.

I.—DATE OF APPLICATION FOR THE PATENT.

To prepare the way for showing more than two years public use before making application for a patent, the defendants insist that the date of application was July 3d, 1860, instead of January 20th, 1855, as held by the complainants, and we think clearly shown by the record. On this point the Circuit Court seems to have coincided with the defendants, as shown in the first clause of the Honorable Judge's opinion, (Record, 20). How the Judge could have entertained doubts, I am unable to discover, except that it was a want of familiarity with the proceedings in the Patent Office, and want of experience in the adjudication of patent causes.

There is not in the record an iota of proof to fix the date of application later than January 20th, 1855, while the proof is positive that the application was made on that day. A certified copy of the file-wrapper and contents is given on pp. 104 to 109 of the record. The Patent Office endorsement on the file-wrapper (Record, 109) shows that the original petition, affidavit, and specification were filed, and the Government fee paid, on the 20th of January, 1855. The drawings and

model were filed January 19th, 1855. The practice of the Patent Office has always required, to complete an application for a patent, a petition, affidavit, specification, drawings, model and the first Government fee. These were all in the office January 20th, 1855. None have ever been withdrawn. On the 3d of July, 1860, Munn & Co., as attorneys for Slemmons, filed an amendment (Record, 108) with the office endorsement, "Amended Specification, filed July 3d, 1860," on its back (Record, 109). At that time the Patent Office rules required that amendments should be sworn to by the inventor. Under this rule, Slemmons swore to this amendment (Record, 107). This amended specification was signed by the attorneys and not by the inventor, while the office has always required that an original specification should be signed by the inventor in person. It was not accompanied by any petition, model, or Government fee, and consequently had none of the features of an "application." The attorneys (Record, 108) calls it an amendment to the pending application, filed January 20th, 1855, and the office received it and treated it as an amendment. The model remained the same, and the invention was the same. It was better described and differently claimed. At that time there was no law as to lapse of time between actions of the office, and consequently no forfeitures. There is no pretense of any abandonment of this application, and I cannot discover a single point upon which to base an argument that the original application was filed July 3d, 1860, or to hang a doubt that the true date of the application was January 20th, 1855.

I submit this point in the defense with entire confidence that this Court will regard the paper filed July 3d, 1860, just as it was at the time regarded by the inventor, his attorneys, and the Patent Office.

II.—THE STATE OF THE ART.

To anticipate the invention, each element of the combination claimed must be found in some one prior machine. It will not do to find a part in one and a part in another.

Seymour vs. Osborn, 548, 553; Bigelow vs. Matthews, 7 Blatch. 81; Blake vs. Stafford, 3 Fish, 294, 305; Mony vs. Sizer, 1 Fish, 17, 21; Union Sugar Co. vs. Matthiessen, 2 Fish, 600, 605; Pitt vs. Edmunds, 2 Fish, 52, 55.

In illustration of the state of the art the defendants have put in evidence:

Three patents for wooden plows, viz:

Edwards, September 19th, 1846, (Record, 264).

G. W. Brown, June 5th, 1849, (Record, 267).

Job Brown, November 14th, 1854, (Record, 278).

Four patents for single-beam iron plows, viz:

Hall, April 25th, 1848, (Record, 269).

Foreman, February 10th, 1851, (Record, 271).

Pagett, March 30th, 1852, (Record, 273).

Harrison & Metcalf, October 11th, 1853, (Record, 275).

One double-beam iron plow, viz:

Mims, 23d December, 1841, (Record, 262).

No one of these prior patents contains the subject matter of either claim at issue. The Mims patent probably comes the nearest, and it lacks the second and fourth elements of each claim.

III.—DID SLEMMONS OBTAIN THE INVENTION SURREPTITIOUSLY FROM ELIJAH LAIZURE.

In the court below a feeble attempt was made to show that Slemmons was not the original inventor, but that he obtained the invention from one Laizure, but

G. W. Brown,

Cultivator.

Patented June 5, 1849.

No. 6,511.

Fig: 1.

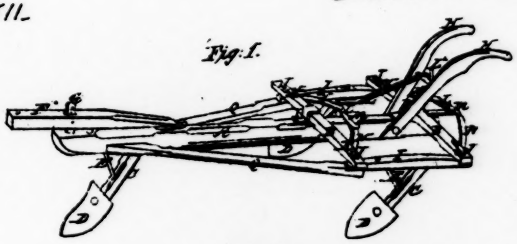


Fig: 2.

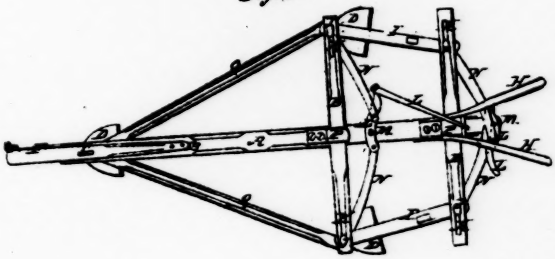
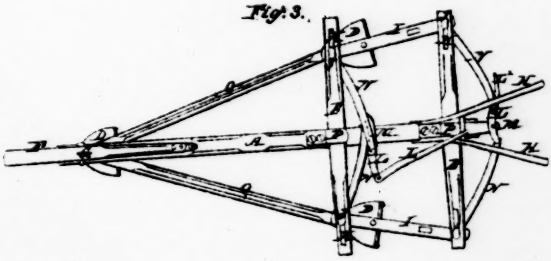


Fig: 3.

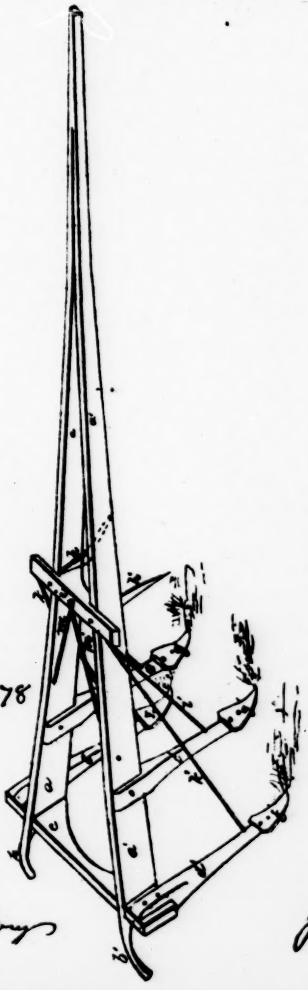


See Record Page 267

J. Brown.

Cultivator.

No. 11,929. Patented Nov. 14. 1854



See Record Page 278

Witnesses

Charles Stone

Jno E. Levy

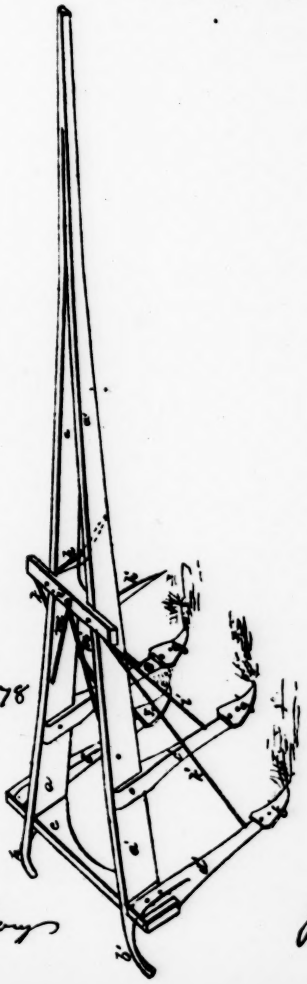
Inventor

Jol. Brown

J. Brown.

Cultivator.

No. 11,929. Patented Nov. 14. 1854



See Record Page 278

Witnesses

Charles Stone

Jno E. Berry

Inventor

Jol. Brown

S. Hall.

Plow,

Patented Apr. 25, 1843

See Record Page 269

J. H. Forman.

Plow

Patented Feb. 10, 185

No 8,721.

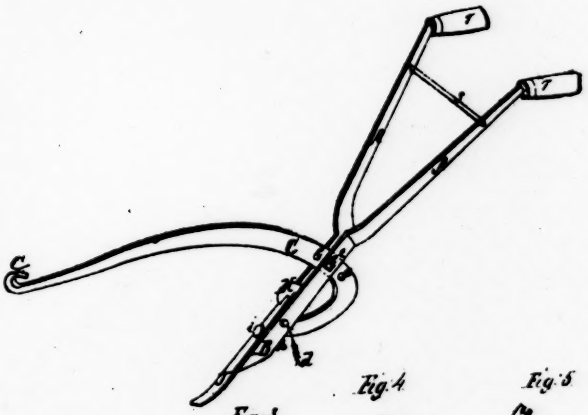


Fig. 2.

Fig. 3

Fig. 4

Fig. 5

Fig. 6

See Page Record 272

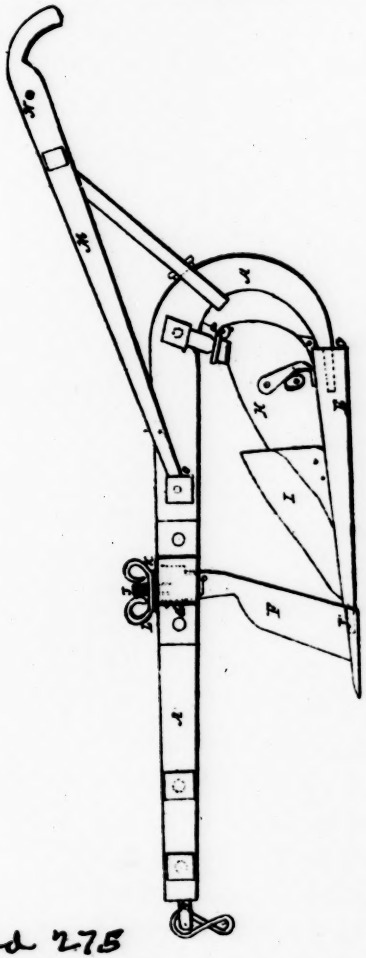
Witnesses,
John Smith
John Jones

Inventor;
J. H. Forman

Harrison & Metcalf

Hill Side Plow.

No. 10,107. Patented Oct. 11, 1853.



See Page Record 275

there is scarcely the shadow of any evidence to sustain such pretense. Slemmons details particularly his conception and development of the invention, and denies that he had even a suggestion from Laizure to aid him (Record, 46 to 48). In his testimony he is fully sustained by his son, John W. Slemmons, (Record, 59, 60). Laizure testifies (Record, 182, 183) that he *suggested* to Slemmons that the plow could be made of iron, and claims that he made one; but on cross-examination he admits that he may have seen a completed plow at Slemmons' shop before he ever built one (Record, 185, 186). He is entirely unsustained, and no where pretends that he did more than *suggest* that the plow could be made of iron. Iron plows were then old, so he *suggested* nothing that was patentable. Laizure is quite uncertain when he made this suggestion, if he ever made it, and does not know but it was after Slemmons was making his first plow. The earliest date he attempts to fix was May or June, 1853, while the proof is clear that Slemmons made his first plow during the previous winter.

Suggestion of an idea does not constitute an invention, or entitle one to rank as joint inventor. *Agawan Co. vs. Jordan*, 7 Wall, 583; *Barrett vs. Hall*, 1 Mason, 447, 472.

While Slemmons' application was pending in the Patent Office, Laizure wrote to the Commissioner of Patents claiming that he helped to make the invention (Record, 106). To avoid the expense of an interference, Slemmons finally agreed to give a one-half interest in the application to Laizure, if Laizure would pay one-half the expense of obtaining the patent. (See Record, 131.) But the wording of the contract itself is evidence that Slemmons was regarded as the inventor.

IV.—WAS THE INVENTION IN PUBLIC USE WITH THE KNOWLEDGE AND CONSENT OF THE INVENTOR MORE THAN TWO YEARS BEFORE APPLICATION FOR A PATENT?

As we have seen, the application was filed in the Patent Office, January 20th, 1855—so the public use to affect the patent must have been before January 20th, 1853. The testimony to establish public use was taken in 1877, twenty-four years after such use. For observers and users to determine within one or two years when they used, or saw others use a particular plow, so long ago, requires a retentiveness of memory possessed by very few persons.

Mr. Slemmons and his son both fix the date of the invention in the winter of 1852-3. They made one plow during that winter, tried it by hand in an ash heap, and sold it, and several more, the summer of 1853. It never could have had any public use until the summer after it was invented, and hence must have been less than two years before the application for a patent. Laizure commenced making the plows about the same time that Slemmons did, and the earliest date he fixes is May or June, 1853.

Slemmons shows from his books that he sold a wooden-beam, double-shovel plow on the 26th of June, 1852, to one John Howland, (Rec. 47, Q. 25). This plow was returned broken late the next fall, or the next winter (Rec. 47), and the repairing of this plow gave rise to the invention (Rec. 48, Qs. 29, 36, and p. 58, Qs. 165 to 173). Also to the same effect is the testimony of his son, John W. Slemmons, (Rec. 59, Qs. 3 to 16). Slemmons swears that no double-shovel iron plows appear in his books until the summer of 1853. Before that they were only wooden-beam plows.

Several other witnesses were called by the respondents to prove prior use, but all say that the plows of which they testify, came from Cadiz—yet none of them have as reliable data for determining the character of the plows, or the date of seeing or using them, as Slemmons, his son, and Laizure. These plows had been in such universal use in that section of country (Cadiz, Ohio,) for 24 years before testifying, that no one, without record evidence, could be certain as to whether a certain plow had iron or wooden beams; or whether it did or did not have the other elements of this invention. With the exception of the Gilmore plow, to be hereafter considered, the witnesses agree with great unanimity that all the first plows involving this invention, were made at Cadiz, Ohio, by Slemmons and Laizure. We think there can be no reasonable doubt from the testimony, that Slemmons made the first. Slemmons swears that he sold some plows for cash, and some on credit. All sold on credit were charged in his books, and that his books show that no iron-beamed plows were charged until the summer of 1853. The invention at issue evidently could not be embodied in a practical wooden-beam plow. I do not deem it important to further dwell on this feature of the case.

As to the weight to be given to testimony based on recollection of remote events, I beg to refer to the following authorities: *Parker vs. Hulme*, 1 Fish 44–53; *Seymour vs. Marsh*, 6 Fish 115–122; *Sayles vs. R. R.*, 2 Fish 523–527, 528; *Ely vs. Monson*, 4 Fish 600–617.

V. ANTICIPATING DEVICES.

The respondents present in evidence one patent, and testimony as to one plow as anticipating devices. The patent is one granted to W. F. Pagett, March 30, 1852,

No. 8,842 (see Rec. 273). It will be noticed that the patent is for an entirely different invention, and one having no analogy to the invention involved in this suit. The Pagett patent relates solely to a method of attaching the plow handles to the plow beam. It is not pretended by the defense that the Slemmons invention is found in the Pagett patent, except in the following clause, found as a suggestion in the body of the specification, (Rec. 274): "On each side of the beam and sheath may "be attached a shorter piece, corresponding in shape "with the first mentioned beam and sheath, thus "making three sheaths, which, with the addition of "three shovels, will answer the purpose of a cultivator. "To make a double shovel on this plan, the main beam "and sheath, and the one applied must diverge equally "from the line of direction or front of the beam.' Nothing of the kind here referred to, whatever may have been meant, was shown in the model or drawings or alluded to in the claims, and hence was not patented. Neither the drawings nor model shows more than a single element of Slemmons' claims.

Whatever idea the language quoted might convey now, after the Slemmons plow is a well-known device, it can hardly be seriously pretended that it would have given the idea of the Slemmons invention to a person who had never seen or heard of a Slemmons plow. The language must be construed in view of the art as it existed *then;* not as it is *now*. When construed in the light of the three-shovel plow, as described in the forepart of the quotation, it is impossible to suppose that it would convey the idea of the Slemmons plow. All the language relied upon by the defence, clearly requires a construction involving a "*main beam*," and an added short beam. What "main beam" means is clear from what is said of the three shovel plow in the same sentence.

The only construction suggested by the language is one where the short or added beam is attached to the main beam closely in rear of, or near to, the handles; and that the main beam is there bent so that "the main "beam and sheath and the one applied must diverge "equally from the line of direction, or (line of the) "front of the beam"—*i. e.*, that part of the beam front of the juncture of the two beams.

This matter will be better understood by reference to the cut opposing this page, and also found opposite page 22 of the record. Figure 1 shows the Slemmons double-shovel plow as claimed in the first claim in issue. Fig. 2 and Fig. 3 show what was evidently meant by Pagett by the language quoted from his patent. Pagett was himself put upon the stand and swears positively that he had in mind double-shovel plows, such as represented by Figs. 2 and 3, and that at that time he never thought of a construction like Fig. 1 (Record, 31). This is still more evident upon examination of the drawings in Pagett's rejected application (Record, 284), and shown herein, marked "Pagett's rejected application." This application was filed in the Patent Office on the same day as the one upon which the Pagett patent issued. One was marked "A" and the other "B," (Record, 30 and 39), and as his language quoted is descriptive of plows made in accordance with these drawings, it is clear that it had reference to no other.

Language, to anticipate and nullify a patent, must be more than a mere suggestion, it must be a clear and intelligent description of an existing devise, and must describe it in such clear and unambiguous terms as to enable any person skilled in the art to which the device belongs, to make it with certainty by following the description without experimentation.

This Court, in *Seymour vs. Osborn*, 11 Wall, 555, in speaking of the use of prior publications to defeat a patent, says:

"Mere vague and general representations will not support "such a defence, as the knowledge supposed to be derived "from the publication must be sufficient to enable those "skilled in the art or science to understand the nature and "operation of the invention, and to carry it into prac- "tical use. Whatever may be the particular circum- "stances under which the publication takes place, the account "published, to be of any effect to support such a defence, "must be an account of a complete and operative invention, "capable of being put into practical operation."

See also *Graham* vs. *Mason*, 5 Fish, 9, *Baldwin* vs. *Schultz*, 5, Fish, 83, *Parker* vs. *Stiles*, 5, McLean, 44.

I fail, however, to find any authority whatever for giving a mere side suggestion found in a patent—a suggestion constituting no part whatever of the patent —the rank and dignity of a prior printed publication among the defences against a patent. It is not a patent. It is not a printed publication; and it cannot under any law, or court decision, become a defence, except it be accompanied by proof showing that the device was actually constructed prior to Slemmons' invention. But in this case the proof shows just the contrary. Pagett swears that no double-shovel plow was ever made by him, or any one else, by said description either before or since obtaining his patent. (See Pagett's testimony, Rec. 30.) Pagett is a mechanic of far more than ordinary ability, and he swears that the language in his patent upon which the defence rely, not only does not describe the Slemmons plow, but that it is repugnant to the idea of a plow thus constructed.

A double-shovel iron plow, having its beams bent in rear to form shovel-standards, one being a main beam

and the other being short and attached to the main beam near the handles, is by no means the equivalent of the Slemmons plow. Between the two there would be a broad, patentable difference. See cut "Pagett I." In a plow having the beams united near the handles, whenever either shovel strikes an obstruction, it becomes a center around which the other will partially revolve, thereby throwing great strain upon the beam at the point of juncture, and also make it almost or quite impossible to control the plow by its handles on rough ground. In the Slemmons' plow, as the beams diverge from the point of attachment of the draft, such difficulty is entirely avoided, making the plow much stronger, and much more easily and safely handled. The difference between two such plows is just the difference between success and failure. This difference, though always abundant to sustain a patent, is often so small as to require very slight change to produce one from the other. That slight change, however, being a step in the art in advance, is *invention*, and very often, as in this case, of very great importance. The testimony abundantly shows that as soon as Slemmons' plow was known, it immediately took the place of nearly all other double shovel plows.

But the main reliance of the defence for anticipating Slemmons' invention is the testimony of James Gilmore. If this testimony is true, then it presents one of the strangest features ever witnessed in a patent suit. Up to this witness, who was one of the last examined by the defense, the examination extending over several months, all the testimony on both sides had traced all the plows involving the invention in question to Cadiz, Harrison county, Ohio. Cadiz was the point from which all came until after 1853. But here comes a man from Illinois, James Gilmore, who formerly lived at

Smyrna, Harrison county, Ohio, a few miles from Cadiz, and left there at the age of nineteen and went to Illinois, who swears that he made and sold double-shovel plows, exactly like Slemmons', in 1848, and every year thereafter to the time he went to Illinois in 1853. In 1848, according to his own testimony, (Record 286 and Q. 38) he was only fourteen years. At this early age he is sure he made and sold these plows. He says himself that he has no means of determining how he remembers that he made them in 1848, but he knows he did. He has no books or record of any kind to refer to. He claims, however, to have an accurate memory ; but his testimony reveals the weakness of that memory about which he boasts. In cross-examination, (Record 291 Qs. 123 and 124,) he was asked if he ever heard of Mathew G. Slemmons being the inventor of the plow in question. He answers that he heard of it in 1855. On redirect examination (Record 292 Q. 130,) when asked the circumstances under which he first heard of the Slemmons patent, referring to the above cross-examination, he answers that a man representing the Slemmons patent called on him to sell him a right to make the plow *and showed him the papers and permitted him to read and comment on the claims.* This interview he swears was in 1855, while the fact is, as shown in the record, that *the patent was not issued until* 1860. This discrepancy of itself is enough to impeach his memory as to what took place in connection with this invention so long ago—thirty years. He left Smyrna for Iowa, November 15th, 1853. So he may possibly have made and sold these plows before leaving Ohio, and yet been after the invention of Slemmons in the winter of 1852–3. This is the most charitable construction that can be given to his testimony. Gilmore also testifies (Record 285 Q. 26,) that before

leaving Ohio, he sold on commission the same plows made at a place called Hole-in-the-Ground. This was another town near Cadiz. But John Oxley, living at Hole-in-the-Ground, testifies (Record 173,) that he has lived there since 1846 and made wooden-beamed shovel-plows, and that so far as he knows Aaron Babb was the first ever to make the iron-beamed double-shovel plows at that place. Aaron Babb swears (Record 173) that he moved to Hole-in-the Ground and commenced making these plows in 1855, and identifies them as the Slemmons-Laizure plow, and as far as he knows he made the first that were ever made at Hole-in the-Ground. So on this point, also, Mr. Gilmore was in mistake. No iron plow like that of Slemmons, and made by Gilmore or any one else prior to 1853 is produced—yet being made wholly of iron, some ought to have been found, if any such ever existed. Gilmore says he sold these plows to Elias J. Phipps, John Bendure, John Fennessoy and William Romans. John Bendure swears very positively that he saw James Gilmore and his father making these plows in 1848. In answer to the question, "How long before "they (Gilmores) left Smyrna, are you positive that "they made and sold these plows?" (Record 309 Q. 15). "Ans. The first I recollect to a certainty was "1848." "Ques. 16. Please state how you fix the "date?" "Ans. I worked in the summer of 1848 "at thrashing-machines for Mr. Griffith, and often "had errands to Gilmore's shop for bolts and irons. "I saw them making double-shovel iron plows when "I was there on said errands." Now George B. Smith (Record 180 Q. 16) swears that Mr. Griffith boarded with him all the time he was in Smyrna, and his books snow that was from April 27th to September 14th, 1850. This is record proof and reliable, so Mr.

Bendure's very positive statements are false. Gilmore had sworn to 1848, and Bendure had evidently been "coached" for the special purpose of sustaining him. However, Bendure nowhere swears that he saw a finished plow in Gilmore's shop or ever heard of Gilmore's selling one.

William Romans was also put upon the stand to support Gilmore, and swears he lived in Smyrna from spring of 1850 to spring of 1851. He then left, but returned in 1853, and remained there until 1855, (Rec. 310, *Q.* 3). He says he was in Gilmore's shop in 1850, and saw Gilmore working at a double-shovel plow like the one at issue (Rec. 311). He is sure it was 1850. Yet he can give no reason whatever for it being that year rather than 1853 when he was also living in Smyrna. He says it was not finished, never saw it afterwards, and saw no plow like it from that time to 1854. He is another witness who was evidently "coached" purposely to sustain Gilmore, but falls far short. He was living at Smyrna from 1850 to 1851, and again from 1853 to 1855, and without being able to give any reason for its being when he was there first rather than during his residence there three years later, he fixes positively the former date—27 *years prior to the time of giving his testimony.* Such testimony is not only absolutely worthless, but its production by the defense is a confession of weakness that should be weighed by the court.

E. J. Phipps (Rec. 304) is also called to sustain Gilmore, and he says his father used a plow like the one at issue, in the summer of 1849, and fixes the date as being the year before he started for California, which was in 1850. He says he lived within one hundred yards of Gilmore's shop, and was very often in it, but is not positive that he ever saw such a plow there, or

one being made there. He says the plow was used in Abijah Matthews' field which his father rented in 1849, and at no other time, as far as he can remember. He thinks his father got the plow of Frank Gilmore, but is not certain. He started for California in March, 1850, but turned back and returned to Smyrna the next month. He says he thinks he saw the same kinds of plows in use about Smyrna also in 1850, 1851 and 1852, and afterward.

At last this man, Phipps, has nothing but his unaided memory which enables him to swear that such a plow was used on the Mathews' farm in 1849, or at any other time. They went into general use in 1853 and 1854 in that section, and having no personal interest in the plow to aid in fixing it in his memory, it is simply impossible for him to say whether he first saw it in Matthews' field or Smith's or Jones' field;—or whether it was twenty-eight or twenty-five yeavs ago. His going to California was an absence from Smyrna of only a month.

I would not dwell longer upon the Gilmore anomaly but for the fact that it seems to have had so much influence with the Circuit Court. The evidence of very many witnesses taken in and about Cadiz, shows that when the Slemmons plow first made its appearance in 1863, when Slemmons and Laizure both made them, they attracted a great deal of attention among farmers and mechanics and were the subject of much talk. If, therefore, they had been made and sold at Smyrna for five years before, it would have been generally known.

Laizure testifies he took these plows to Moorfield, near Smyrna, and sent them on the Cambridge hack through Smyrna, in 1853. He had a man by the name of Thomas Dick, from Smyrna, working for him, and thinks he would certainly have heard of it if

any had ever before been made at Smyrna—but he never heard of it until Gilmore testified in this suit (Record, 132).

W. L. Houser drove the hack and carried the mail from Cadiz to Cambridge, from 1848 to sometime in 1852, and again from sometime in 1853 to the latter part of 1854, and in doing so went through Smyrna every day. Was well acquainted with young Gilmore. Gilmore's shop was next to the Post Office, and he generally went into Gilmore's shop while the mail was being changed. Was in the shop nearly every day. Would have seen the plows if made there, but never did. The first he ever saw were two from Slemmons' shop, in Cadiz, which he took on his hack to Brandus Bethel, near Smyrna, in the spring of 1853 (Record, 140.)

William B. McFadden lived within six or seven miles of Smyrna, from 1845 to 1873. Very often in Smyrna. Never heard of plows like the Slemmons being made there. All that class of plows at that time came from Cadiz (Record, 143).

C. G. Kennedy has lived at Moorefield, less than five miles from Smyrna, ever since 1845, and engaged in blacksmithing until 1867. Being in the same business, would certainly have known if Gilmore had made and sold these plows from 1848 to 1853. Never heard of such a thing. Our first plows of this kind all came from Cadiz. They were then regarded as a new thing and attracted much attention (Record, 148).

To the same effect is the testimony of Dr. Jesse Hall (Record, 153); Samuel R. Smith (Record, 157); William G. Smith (Record, 160); William K. Smith (Record, 163); William Matthess (Record, 164); Thomas Green (Record, 166); William Hollett (Record, 167); Andrew Steel (Record, 170), and several others.

George B. Smith (Record, 178), lived in Smyrna from 1836 to 1854, and never out of the town more than a week at a time, except once, and was then absent two weeks. Frank Gilmore, James Gilmore's father, and himself were on very intimate terms, and kept up correspondence long after the Gilmore's went West. Says it was impossible that a double shovel iron plow could have been made in the Gilmore shop without his knowledge, for their shop was close by the witness' house. Witness was a farmer, and Phipps could not have obtained from them a plow and used it at the time they say without his knowledge—and he never saw such a plow until they came from Slemmons and Laizure, at Cadiz.

Very few inventions ever came into court without attempts to anticipate them, and the older the invention the more positive the witnesses generally testify. It is doubtful whether any invention of twenty-four years standing should ever be permitted to be anticipated, except either by record evidence, or by the production of the thing itself, well identified. If any of the plows alleged to have been made by Gilmore before 1853, could have been brought into court, properly identified, the defense would have been perfect. Less than that should not be accepted. If made at all, they were made of all iron, except the handles, and must be somewhere in existence, at least one of the large number; and it was incumbent on the defense to find it. The wonderful memories that could with such positiveness fix times and events of twenty-nine years ago, could certainly have traced the chain of transfers and ownership of at least one of those plows. They have not produced a plow made by Gilmore. They could not, for the simple reason that he never made one.

After a thing becomes so very common all over the country, as the Slemmons plow has during the last twenty-five years, (the record shows that they have been made and sold in vast numbers under licenses, all over the West), it is difficult for farmers and others to remember when they did not have them, and many will confuse themselves with other somewhat analogous devices, and thus carry an invention back long before it existed.

VI.—IS THE REISSUE UPON WHICH THIS SUIT IS BROUGHT FOR AN INVENTION OTHER THAN FOR WHICH THE ORIGINAL WAS GRANTED? IN OTHER WORDS, IS THE REISSUE INVALID BECAUSE OF NEW MATTER?

It needs, it seems to me, but a casual inspection of the original patent, and a comparison with the present reissue, to satisfy any intelligent mind that there has been no departure from the invention described and shown in the original patent, and no new matter introduced in the reissue; yet in the court below, an elaborate effort was made to torture the decision in *Russell* vs. *Dodge* 3, Otto 463, into a prohibition of any material alteration of the claims in a reissue. This argument was evidently made under a misapprehension of the statute and a misunderstanding of the tenor and scope of said decision. The statute, section 4,916, relating to reissues, clearly means by "new matter," such matter as is not presented in the specification, drawing or model, of the original application. The closing part of the section reads as follows:

"But no new matter shall be introduced into the specifica-
"tion, nor in case of a machine patent shall the model or
"drawings be amended, except each by the other; but where
"there is neither model nor drawing, amendments may be made
"upon proof satisfactory to the commissioner that such new

"matter or amendment was a part of the original invention, "and was omitted from the specification by inadvertance, ac- "cident or mistake."

Where there is neither model nor drawing, added matter may be introduced on proof satisfactory to the Commissioner that such matter was a part of the original invention. The application for reissue is accompanied by the oath of the applicant, in which he swears that he *invented* the matter he seeks to claim, and that he *believes* himself to be the *first* inventor, and that it was a part of his original invention omitted by mistake from the original specification. If the Commissioner sees fit to accept this oath as sufficient—*i. e.*, if such oath is "proof satisfactory to the Commissioner," he may grant the reissue, and must do so under the statute. In fact, no person on earth but the applicant can possibly know whether the invention originated in his mind; hence he is the only person who can possibly swear to that fact—and even he cannot swear that he is the first inventor, except as to belief. The practice of the office has generally been (perhaps always) to demand proof in addition to the applicant's oath, not that the applicant was the first inventor, but that prior to his original application for a patent, *he used the combination* as described and claimed in the application for reissue. The fact that the applicant then used it is the best available testimony to corroborate the applicant's oath that it was a part of his original invention; yet it is only proof that it was in the applicant's mind at the time of the original invention: but is not proof as to whether it got there by invention or otherwise. The fact that the element omitted in the original patent was familiar to the applicant at the time of the original application, could be shown with much greater certainty by the

model and drawings, if there were any; but in their absence, the law permits proof less reliable. The object of the law being to prevent unjustly subordinating subsequent inventions by reissues of old patents.

In case there be a model and drawing, the same oath of original invention is required of the applicant, and the same oath as to inadvertance, accident, or mistake. But whether the part of the machine omitted in the original specification and claim was a part of the original device, is better shown by the device itself, as exhibited in the models and drawings, than it possibly could be by parol testimony. To admit parol testimony in such case, would be a greater violation of the principles underlying the laws of evidence than to admit such testimony to modify the meaning of an unambiguous written instrument. Language may be uncertain, and though definite and unambiguous to a court may still fail to express the meaning of the parties. Not so with a machine. It cannot be ambiguous or equivocal. It is definite, positive, certain. It has but one meaning.

The design of the law is to treat all inventors as nearly alike as practicable. If the original patent does not cover so as to secure the whole of the applicant's invention, and the omission has been by inadvertance, accident, or mistake of the applicant, or his attorney, or the Commissioner of Patents, he may surrender his original patent and ask for a reissue, which shall include and secure the whole of his invention. But he shall add no "new matter"—*i. e.*, no matter not a part of his original invention. If he has a model and drawings he must be confined to these, to show that the new element sought was a part of the original construction. If he has no model or drawing, then he

may adduce such other proof as will be satisfactory to the Commissioner.

When the applicant has thus been successful in showing that he had in his possession and use the device claimed at the time of his original application, and adds to this his oath that he invented it, and that he believes himself to be the first inventor, and that the original was inoperative because of inadvertance, &c., to properly protect him in his invention, the Commissioner must meet the application by showing that the invention claimed was old at the time of the original application, or he must grant the reissue. Such must be the meaning of this section of the law if it has any meaning. Hence, in a reissue, an inventor may claim whatever he might have claimed originally upon the same model and drawings. This right of reissue remains with the patentee to the end of the term for which the patent is granted, or for which it may be extended. The law says "Whenever a patent is," &c., the limit of the time in which to reissue is limited only by the life of the patent.

The decisions of the Courts go fully to this extent in the construction of the statute.

In *Wheeler vs. Clipper Mower and Reaper Co.*, 6 Fisher 18; Woodruff, J.

"The original patent embraced as an aggregate combina-
"tion, several parts of the entire machine described in the
"specification, and claimed such aggregate as the invention of
"the complainant. These parts were all shown in the speci-
"fication, drawing and model.

"I know of no rule which forbids the inventor, who has
"omitted to claim separate new devices or several distinct
"combinations in the original patent, making a surrender and
"taking reissues for the distinct combinations or separate de-
"vices.

"From the fact of surrender and reissue it is to be inferred
"that the original patent did not secure to the patentee all

"that he claimed in the reissue, but that alone does not render "the reissue void; if the devices covered by the reissue were, "in fact, new and useful, and if they are shown in the orig- "inal specification, drawings or model, then the patentee is "entitled to secure the exclusive use of each separately by a "reissue embracing each."

To exactly the same purport and in almost the same words. *Carew* v. *Boston Elastic Fabric Co.*, 5 Fisher, 98. *Seymour* v. *Osborn*, 11 Wallace, 543 to 545. *Middleton Tool Co.* v. *Judd*, 3 Fisher, 142. *Potter* v. *Holland*, 1 Fisher, 337. *Sarven* v. *Hall*, 5 Fisher, 420. *Berschoff* v. *Wertheread*, 9 Wallace, 814. *Providence Rubber Co.* v. *Goodyear*, 9 Wallace, 788.

Neither have the later decisions of the Supreme Court modified these views of the law for reissues, and I do not see how any court can modify them while the law stands as it does. Justice Clifford, of the Supreme Court, has lately had this question before him twice on the circuit, and in both cases sustained the doctrine fully, as expressed by Judge Woodruff in *Wheeler* v. *Clipper Mower and Reaper Co.*, already cited.

In *Tucker* v. *Tucker Manufacturing Co.*, 10 Off. Gaz. 464, Judge Clifford says:

"Unquestionably the Commissioner of Patents may allow "the specification to be amended if the patent is inoperative "or invalid; and in that event he may reissue the patent in "proper form. Errors and imperfections may be corrected, "and with that view the Commissioner may allow the patentee "to re-describe his invention, and to include in the descrip- "tion and claim of the patent not only what was well de- "scribed before, but whatever else was suggested or substan- "tially indicated in the specification, model, or drawings, "which properly belonged to the invention as actually made "and perfected. Interpolations of new features or devices "which were neither described, suggested, nor indicated in "the original specifications, drawings, or Patent Office model "are not allowed, for the plain reason that the Commis- "sioner has no jurisdiction to grant a reissue unless it be for "the same invention as that embodied in the original patent."

Still later, the same Justice, in *Stevens* v. *Pritchard*, 10 Off. Gaz. 506, says:

"Surrenders are allowed in order that what was imperfect "before may be made perfect, and in order that what was "before ambiguous may be made clear and certain; and for "that purpose the patentee may add whatever was substan- "tially suggested or indicated in the original specifications, "drawings, or Patent Office model. New features may not be "introduced, for the reason that every interpolation of the "kind is forbidden by the Act of Congress. Errors and "defects may, however, be corrected under the conditions "specified; and the prohibitions that new feature shall not "be introduced must not be understood as taking away the "right to include in the reissue, whatever was substantially "suggested or indicated in the surrendered specifications, "drawings, or Patent Office model."

In *Pearl* v. *Ocean Mills*, 11 Off. Gaz. 4, Judge Shipman holds clearly, that when a combination of several parts was claimed in the original, the patentee may, in the reissue, claim a combination of a less number of parts, if the same are described, suggested, or substantially indicated in the original application. His language is as follows:

"When in the specifications of the original patent, the "inventor describes a new and useful combination of a num- "ber of ingredients performing in combination certain "functions less than he has claimed, he may in the reissue "claim such combination of the less number which he has "described, suggested, or substantially indicated as his inven- "tion, but failed to include in his claims, and the reissue need "not describe it in the exact language of the original, but "may contain a more full and exact description of the same "invention, imperfectly described in the original. There is "nothing in the decision in *Wells* vs. *Gill* in conflict with "this statement of the principle of patent law."

There are no late *decisions* holding any contrary doctrine. In *Russel* vs. *Dodge*, 3 Otto, 463, there are expressions which would seem, upon careless reading, to indicate different views; but when these expressions

are considered in connection with the subject matter before the court, and Justice Field's strong, incisive language is remembered as applicable to that case, rather than as expressing general principles, the case is in perfect consonance with former and subsequent decisions. The case before Justice Field was one where there was neither model nor drawing, and where the reissue was not only different from, but inconsistent with, the original. The "new matter" introduced was *repugnant* to the original. One important element had been omitted, and another, not its equivalent, substituted. It was very clearly a case where the patentee was fraudulently attempting to cover some other person's invention, or subsequent discovery, and deserved the strong language used against it.

It would be mal-practice to apply language justifiably used in regard to such a reissue, to the case now under consideration. There is nothing common between them.

VII.—WAS THE INVENTION NOW CLAIMED IN THE REISSUE SPECIFICALLY DISCLAIMED AS A CONDITION OF SECURING THE EXTENSION OF THE PATENT, AND IS THE REISSUE THEREFORE INVALID?

In the court below, it was argued at length that the patentee had disclaimed certain matter in order to secure an extension — and after the extension was granted that the same matter was restored by reissue and the Circuit Judge seems to have adopted this view of the case. While I deny that the matter disclaimed was restored by reissue, yet if such had been the fact, it would not invalidate the reissue—for it has been uniformly held by the courts, that a mistake in

a disclaimer may be corrected by reissue as well as any other mistake. If the Commissioner by mistake, required the disclaimer of certain matter as a condition of extension, and afterward discovers his mistake, he certainly is not transcending his authority, if he permits the matter to be restored in a subsequent reissue. So, admitting that all the defense charges should be true, yet it could not invalidate the reissue.

But it is not true, as proved by the defendants' own record. The application for extension of this patent was stoutly resisted by plow manufacturers. An extended hearing was granted by Acting Commissioner J. M. Thacher, and a decision rendered October 5, 1874—four days prior to the expiration of the original term of the patent. This decision is found in full on page 280 of the Record. The first reissue, in force at time of the extension, had six claims, loosely drawn, and evidently not all of them valid in view of the state of the art at the time of the original application. That is, they were so drawn as to make them cover what had before been patented to others. It will be seen that the Commissioner required a disclaimer of five of the six claims, but says that the third and fourth claims contain patentable subject matter "which might receive protection by properly restricted claims." So, in this decision, the Commissioner indicates what may be done by a reissue. As but four days were left before the expiration of the term, a reissue before such expiration was impossible, so, of course, the suggestion of the Commissioner was a reissue after extension.

The disclaimer is found in full on page 281 of the record. It will be seen on examination that the patentee disclaims the claims as worded,—introducing the part disclaimed by "That is to in the following words, viz:"

At the close, the patentee makes a reservation in the words, "*Reserving right to reissue in proper form.*"

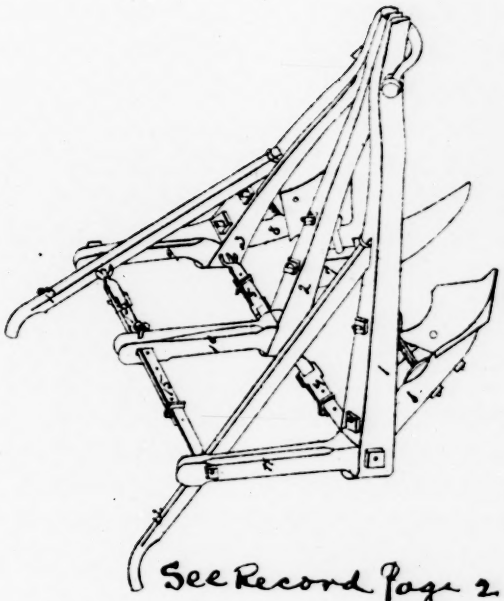
Afterward the present reissue was granted by the same Commissioner in person, allowing four claims, and not one of them open to the criticisms of his decision demanding a disclaimer. The first and second claims, the only ones at issue in this suit, contain exactly what the Commissioner, in his decision, suggested might be secured by reissue, and no more. It will be noticed that the claims objected to included such plows as the Edwards', the Pagett's, and the Mims, shown in the cuts here introduced. The Edwards plow is merely a gang of plows, with the beams loosely coupled together, lacking the 2d and 3d elements of Slemmons' first and second claims; the Pagett plow is a single shovel iron plow and lacks the 1st, 3d and 4th elements of Slemmons' first and second claims, while the Mims plow has beams diverging from a point at considerable distance from the point of attachment for the draft, and the rear of the beams are not bent to form shovel standards, lacking the 2d, 3d and 4th elements of Slemmons' first claim, and lacking the 2d and 3d elements of Slemmons' second claim. The present reissue limits the claims closely to just what was new in the original. They are much narrower than in the former reissue, and yet broad enough to cover Slemmons' invention, and broad enough to include the plow manufactured by the defendants.

It will therefore be seen that in this reissue the patentee has, first, carefully followed the suggestion of the Commissioner as made in his decision demanding a disclaimer before extension, and, second, that he has not in the present reissue restored anything that was disclaimed before extension. The Commissioner

I. Edwards.

Cultivator.

Patented Sept. 19. 1846.



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Inventor
Isaac Edwards

W. F. Pagett.

Shovel Plows.

No. 8,842. Patented Mar. 30. 1852.

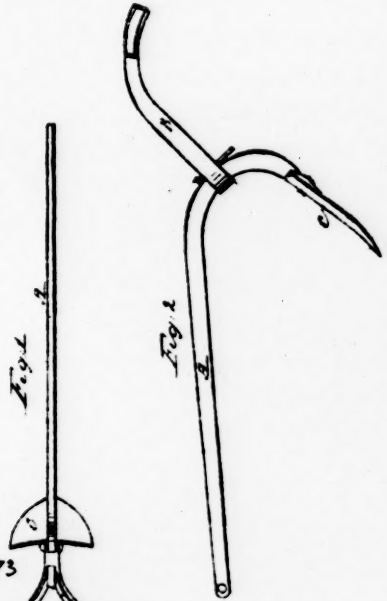

Fig. 1

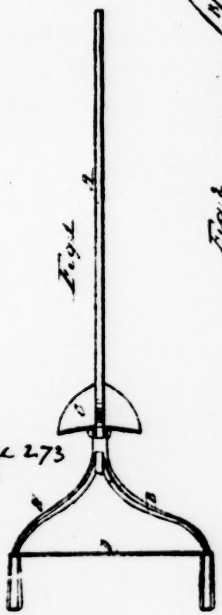

Fig. 2

See Record Page 273

M. & S. L. Mims.

Plow.

No. 2.399. Patented Dec. 23. 1841.

Fig: 1.

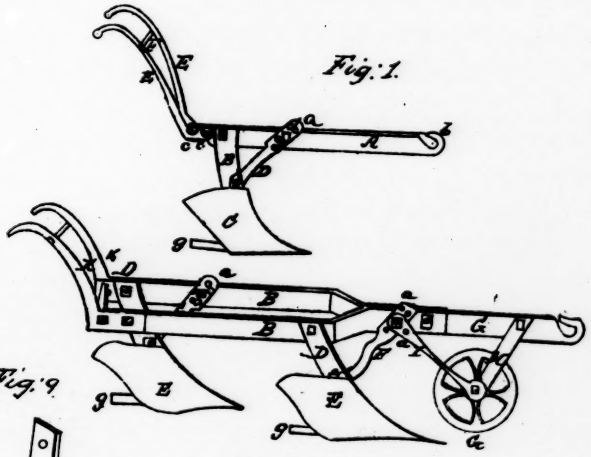

Fig: 2.

Fig: 3.

Fig: 4.

Fig: 5.

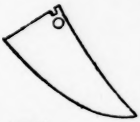

Fig: 6.

Fig: 8.

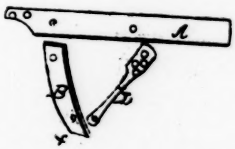

Fig: 7

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objected to the former claims because, in his opinion, they included such devices as Edward's, Pagett's, and Mims.' The spirit and the wording of the disclaimer, disclaimed all such devices, and the present claims cover none of them.

VIII.—WAS THE PATENT EXTENDED FOR THE BENEFIT OF ASSIGNEES AND NOT FOR THE INVENTOR, AND IS THE REISSUE THEREFORE VOID?

It was argued below that the extension was void unless it was made for the benefit of the inventor. I don't know of any such law. But the record shows that the extension was for the benefit of the inventor. For the extended term, the assignees, as the record shows, paid all the expenses of the reissue, and paid to the inventor all the expense of the extension which was large, and two thousand dollars in cash. This was a liberal compensation for the extended term.

IX.—UTILITY.

Of the utitity of the invention there can be no better evidence than the list of licenses given in the record p. p. 113 to 121, and elsewhere all through the testimony. It is a very cheaply made plow, very durable, free from the side thrusts upon the draft as was common in the older forms of double-shovel plows, and far easier upon the plowman, as it runs so much steadier in rough ground

Very few patents have ever been contested in the courts with so little brought against them as in this case. No anticipation has been produced, except such as rest for their support upon vague and shadowy memories of events occurring from twenty-five to thirty

years ago. I think all parties were taken completely by surprise by the decision of the Circuit Court. The decision is itself an anomaly in patent adjudications. The learned judge having since deceased, I will refrain from further comments upon it. It will be found on page 20 of the record.

Respectfully submitted,

M. D. LEGGETT,
Solicitor, and of Counsel, for Appellants.